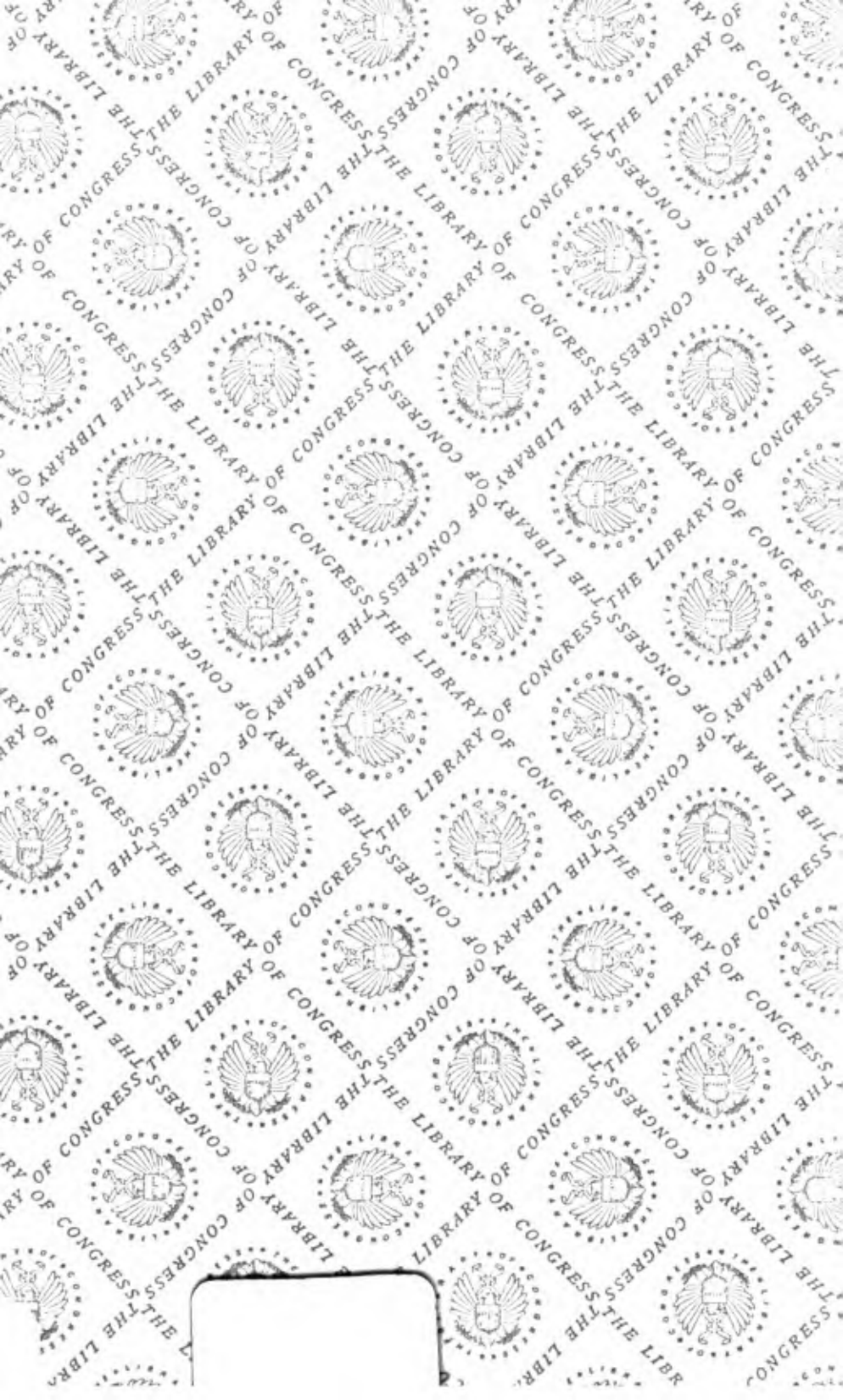
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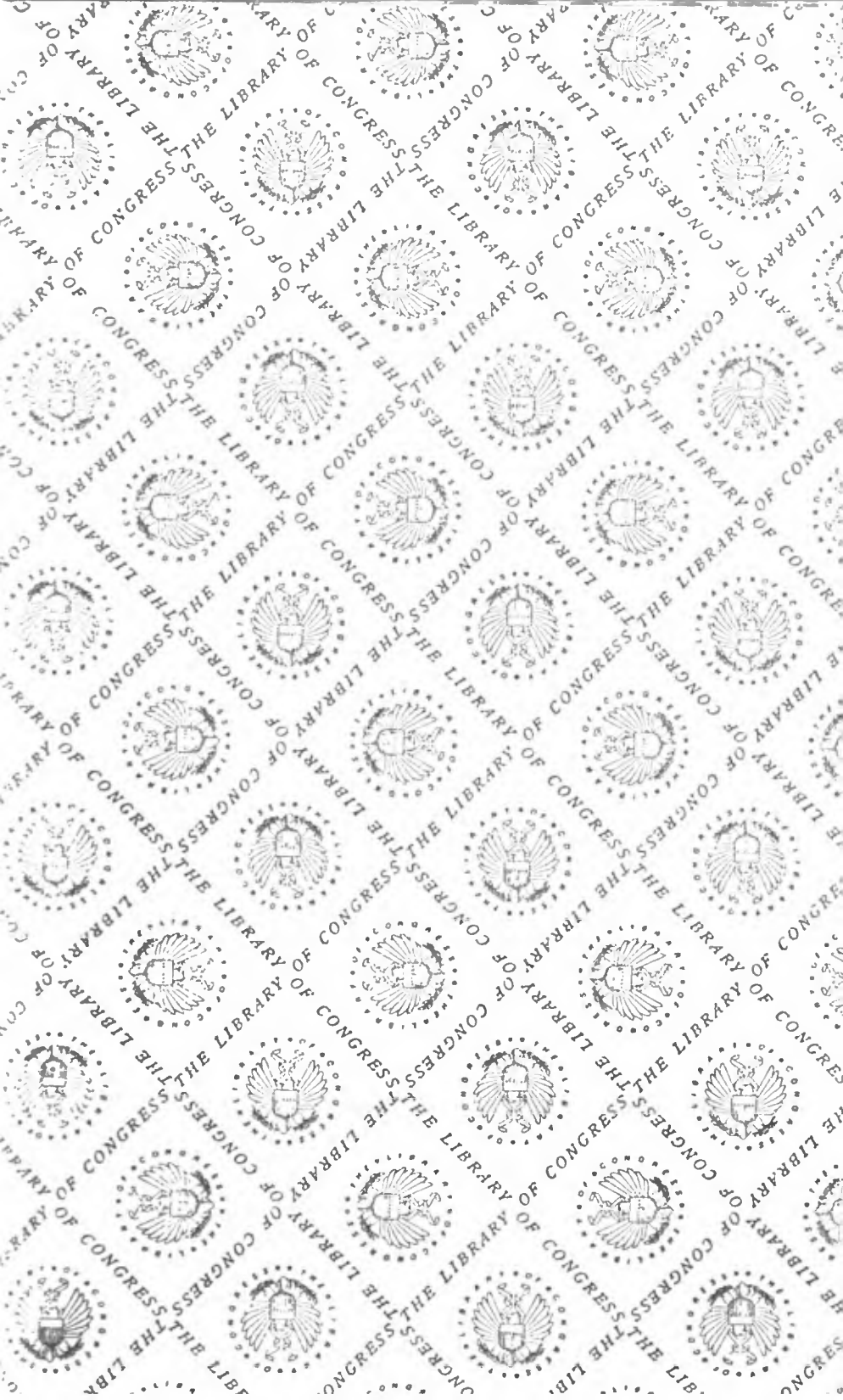
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Part 1

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

FIRST SESSION

ON

H.R. 3595, H.R. 3596, H.R. 2357, H.R. 5347, H.R. 8385, H.R. 9088, H.R. 9989, H.J. Res. 364 (and all identical bills)

RELATING TO SETTLEMENT OF EMERGENCY LABOR-MANAGEMENT DISPUTES AFFECTING THE TRANSPORTATION INDUSTRY

JULY 27, 28, 29; AUGUST 3, 4; SEPTEMBER 14, 15, 16, 21, 28, 29, AND 30, 1971

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ORGANIZATIONS REPRESENTED AT HEARINGS

Air Transport Association of America:
Goulard, Everett M., counsel, Airline Industrial Conference and vice president, Industrial Relations, Pan American Airways.
Tipton, Stuart G., president.
American Association of Port Authorities:
Altvater, George, executive director, Port of Houston Authority.
Amundsen, Paul A., executive director.
Reed, E. S., executive port director and general manager, Port of New Orleans.
Stanton, J. L., director of ports, State of Maryland.
American Bar Association, Jerre S. Williams.
American Federation of Labor and Congress of Industrial Organizations (AFL–CIO):
Biemiller, Andrew J., legislative director.
Hall, Paul, president, Maritime Trades Department.
Harris, Thomas E., associate general counsel.
Yost, James E., president, Railway Employes' Department.
American Retail Federation:
Ehrlich, Lawrence D., attorney.
Smetana, Gerald C.
Association of American Railroads, Stephen Ailes, president.
Brotherhood of Locomotive Engineers:
McCulloch, Edward L., vice president and national legislative representative.
Ross, Harold A., chief counsel.
Brotherhood of Maintenanace of Way Employes, H. C. Crotty, president.
Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express & Station Employes:
Dennis, C. L., international president.
Highsaw, James, Jr., counsel.
Congress of Railway Unions, Lester P. Schoene, counsel.

Organizations represented at hearings—Continued

Defense Department:
- Chagnon, Paul R., Deputy Director of Inland Traffic, Military Traffic Management and Terminal Service.
- Cosimano, Joseph J., Strike Coordinator, Military Traffic Management and Terminal Service.

Forest Industries Council, Raplh W. Kittle.
Labor Department:
- Hodgson, Hon. James D., Secretary.
- Nash, Peter G., Solicitor.
- Usery, W. J., Jr., Assistant Secretary.

National Association of Manufacturers:
- Fisher, Lyle H., member, Industrial Relations Committee.
- Hale, Randolph M., Washington representative, Industrial Relations.
- Matturro, J. P., director, Labor-Management Relations.

National Coal Association, Carl E. Bagge, president.
National Railway Labor Conference, John P. Hiltz., Jr.
Oklahoma Wheat Commission, Charles D. Rhoades, executive director.
Railway Labor Executives' Association:
- Hickey, Edward J., Jr., general counsel.
- Soop, Taylor, executive secretary.

Seafarers International Union of North America, AFL–CIO, Paul Hall, president.
Transportation Association of America:
- Isbell, James E., Jr., representing the shipper members.
- Seyfarth, Henry E., chairman, Transport Labor Committee.
- Weller, John L., representing the investor members.

Transportation Department:
- Barnum, John, General Counsel.
- Lyon, Carl V., Acting Administrator, Federal Railroad Administration.
- Trimarco, Thomas, Assistant General Counsel.
- Volpe, Hon. John A., Secretary.

United Transportation Union:
- Chesser, Al, national legislative director and president-elect.
- Luna, Charles, president.

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

TUESDAY, JULY 27, 1971

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order.

The hearings today are on a number of legislative proposals pending before the committee relating to the subject of settlement of emergency labor disputes affecting the transportation industry.

Chairman Staggers, for himself and Mr. Springer, has introduced the administration's proposal, H.R. 3596. Mr. Staggers also introduced, for himself and others, H.R. 3595, which is supported by a number of labor unions. I have introduced H.R. 9989, which embodies recommendations made by the Association of American Railroads and the Air Transport Association.

Our colleague on the committee Mr. Pickle has introduced legislation on this subject for a number of years, and his bill during this Congress is H.R. 2357, providing several alternative means to the President for settling disputes; and our colleague Mr. Harvey, for himself and numerous other Members, has introduced H.R. 9571 and other identical bills also providing a number of options for the President. In addition, our colleague on this subcommittee Mr. Dingell has introduced H.R. 5347, which provides a revised procedure under the Railway Labor Act for resolving disputes.

These issues are complex and are likely to be controversial; however, in view of the fact that Congress has had to intervene, with increasing frequency, in labor-management disputes involving the railroad industry in recent years, I do not think that it can be denied that the Railway Labor Act of 1926 needs reexamination at this time.

At this point there will be included in the record a summary of legislative proposals for settling emergency labor disputes, the text of the bills and the agency reports thereon.

(The documents referred to follow:)

SUMMARIES OF LEGISLATIVE PROPOSALS, INTRODUCED IN THE 92D CONGRESS THROUGH SEPTEMBER 30, 1971, FOR SETTLING EMERGENCY LABOR DISPUTES

(INCLUDES ALL BILLS REFERRED TO THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE)

H.R. 3596, sponsored by Messrs. Staggers and Springer, referred to Committee Feb. 4, 1971

To provide more effective means for protecting the public interest in national emergency disputes involving the transportation industry, and for other purposes

Identical bills

H.R. 901, Mr. Mayne, Jan. 22, 1971.

H.R. 3639, Messrs. Lloyd, Mayne, Dennis, McCloskey, and Steiger of Arizona, Feb. 4, 1971.

H.R. 4116, Messrs. Gerald R. Ford, Mayne, Lloyd, Nelsen, and Harvey, Feb. 10, 1971.

H.R. 5377, Mr. Broomfield, Mar. 2, 1971.

Coverage: Labor disputes in the following transportation industries: railroads, airlines, maritime, longshore, and trucking. At present, labor disputes on the railroads and airlines are covered by the Railway Labor Act, in the maritime, longshoring, and trucking industries by the Labor Management Relations (Taft-Hartley) Act.

Provisions: Title I. Repeals the emergency disputes procedures of the Railway Labor Act and brings disputes involving railroads and airlines under the emergency provisions of the Labor Management Relations (Taft-Hartley) Act. Amends the existing national emergency disputes provisions of the Taft-Hartley Act by bringing rail and air carriers under the 80-day cooling-off procedure and adding three new options applicable to them and the other transportation industries—maritime, longshore, and trucking. These optional procedures could be used if a national emergency dispute in transportation were still unresolved after the 80-day cooling-off period. Petition for an 80-day injunction must be before a three-judge district court in the case of national emergency disputes in the transportation industries.

Empowers the President to choose any one, but only one, of the new optional procedures. Within a 10-day period, either House of Congress may reject the President's choice. If either House should reject his choice, or if he makes no choice, the President shall submit to the Congress a supplemental report including such recommendations as he may see fit to make.

One of the new options available to the President is to extend the no-strike, no-lockout period for not more than 30 days beyond the 80-day cooling-off period.

A second option is to appoint a special board of three impartial members to review the feasibility of requiring partial operation of the industry (the essential or critical part) after the 80-day cooling-off period, and permitting strike or lockout in the rest of the industry. The special board's decision must be made within 30 days; during that period no change, except by agreement, shall be made in the terms and conditions of employment. Partial operation pursuant to the board's decision would be limited to a maximum of 180 days.

Under the third option, the parties are required to submit their final proposals for full resolution of the controversy following the 80-day cooling-off period. Provides that the parties would be given three days in which to submit two final offers and that if any party fails to submit a final offer or offers, the last offer made during previous bargaining would be deemed its final offer. Directs that following this submission to the Secretary of Labor, the parties would be required to meet and bargain for 5 days, with or without mediation by the Secretary of Labor. Provides that as a second step, the parties would be given an opportunity to select a three-member panel to act as "Final Offer Selector" and that if the parties were unable to select the panel, it would be appointed by the President. Asserts that the panel would hold hearings and determine which of the final offers constituted the final and binding resolution of the issues. Provides that in reaching its determination the panel could not choose any settlement other than one of the final offers. Specifies the criteria to be used by the panel in reaching its decision. Provides that the panel's choice would become the contract between the parties. The determination of the panel shall

be conclusive unless found arbitrary and capricious by the district court which granted the 80-day injunction in the dispute.

Title II: Amends the Railway Labor Act by (1) transferring mediation duties of the National Mediation Board to the Federal Mediation and Conciliation Service (which now mediates disputes under the Taft-Hartley Act); (2) leaving as the sole functions of the National Mediation Board (re-named the Railroad and Airline Representation Board) determination of appropriate bargaining units and holding representation elections for those units; and (3) phasing out over a two-year period the present National Railroad Adjustment Board, leaving labor and management to provide grievance machinery in their collective bargaining agreements.

Title III: Establishes a seven-member National Special Industries Commission, for a term not to exceed two years, to study labor relations in those industries which are particularly vulnerable to national emergency disputes and to make recommendations concerning such industries as to the best ways, including new legislation, for remedying the weaknesses of collective bargaining.

Title IV: Amends the Railroad Unemployment Insurance Act so as to deny unemployment benefits to strikers.

Miscellaneous: H.R. 3596 is the administration's proposal, as detailed in President Nixon's message on dealing with national emergency labor disputes sent to the Congress Feb. 3, 1971 (H. Doc. 92–43). H.R. 3596 is the same as three identical House bills referred to the Committee in 1970: H.R. 16226, introduced by Messrs. Gerald R. Ford, Lloyd, Steiger of Arizona, Winn, Eshleman, and Mayne, Mar. 2, 1970; H.R. 16272, introduced by Messrs. Staggers and Springer on Mar. 3, 1970; and H.R. 16273, introduced by Mr. Steiger of Wisconsin on Mar. 3, 1970. The three House proposals in 1970, cited, as is H.R. 3596, as the Emergency Public Interest Protection Act, contained the administration's recommendations as outlined in a Presidential message on national emergency disputes, transmitted to the Congress Mar. 2, 1970 (H. Doc. 91–266).

H.R. 3595, SPONSORED BY MESSRS. STAGGERS, ECKHARDT, AND MACDONALD OF MASSACHUSETTS, REFERRED TO COMMITTEE FEBRUARY 4, 1971

To amend the Railway Labor Act to avoid interruptions of railroad transportation that threaten national safety and health by reason of labor disputes, and for other purposes

Identical bills

H.R. 4996, Messrs. Moss and Adams, Feb. 25, 1971
H.R. 4620, Mr. Roncalio, Feb. 18, 1971
H.R. 4996, Messrs, Moss and Adams, Feb. 25, 1971
H.R. 5870, Mr. Tiernan, Mar. 10, 1971

Coverage: Labor disputes in the railroad industry; coverage of labor disputes in the airline industry is open to question. The bill amends section 10 of the Railway Labor Act, which applies to the airlines as well as to the railroads. But the preamble and other provisions of H.R. 3595 imply that the bill relates only to rail carriers.

Provisions: After employees have exhausted all dispute-settlement procedures under the Railway Labor Act without an agreement, they may, subject to the limitations and obligations of partial operation as indicated below, strike all the carriers involved in the bargaining or selectively strike only some of these carriers. A strike is a "selective" strike if not more than three carriers operating in any one of the eastern, western, or southeastern regions are struck at the same time and the total revenue ton-miles transported during the preceding year by the struck carriers in any region represented not more than 40 percent of total revenue rail ton-miles in that region.

Provides for partial operation of struck carriers, as may be directed by the Secretary of Transportation. That official, after consultation with the Secretaries of Defense and Labor, shall determine the extent to which operations of any struck carrier or carriers are essential to the national health or safety, including but not necessarily limited to transport of defense materials and of coal to generate electricity, and continued operation of passenger trains including commuter service. Determination of the Secretary of Transportation shall be conclusive unless shown to be arbitrary or capricious. Partial service and transportation shall be provided pursuant to the rates of pay, rules, and working conditions of existing agreements.

Prohibits carriers which are not struck from locking out its employees. Where a carrier proposed changes to agreements affecting pay, rules, or working condi-

tions and all procedures of the Railway Labor Act have been exhausted with respect to such changes without agreement, the carrier may effect the changes except where (1) the proposal was made in response to or in anticipation of employee proposals, or (2) the employees had not struck.

Miscellaneous: The approach represented by H.R. 3595 has the support of the AFL–CIO and its member unions, including the railroad unions.

H.R. 3595 is basically the same bill as H.R. 1992, introduced in the 91st Congress by Representative Eckhardt, on Dec. 8, 1970.

H.R. 9989, sponsored by Mr. Jarman, referred to Committee on July 21, 1971.

To amend the Railway Labor Act and the Railroad Unemployment Insurance Act so as to provide more effective means for protecting the public interest in labor disputes involving transportation industry, and for other purposes

Coverage: Labor relations in the railroad and airline transportation industries.

Provisions: H.R. 9989 revises not only dispute-settlement procedures but also other provisions of the Railway Labor Act. Dispute-settlement recommendations of the bill are the following:

(1) Upon the failure of the National Mediation Board to successfully resolve *any* dispute by mediation, it must notify the Secretaries of Labor, Commerce, and Transportation who are directed to appoint an ad hoc Transportation Labor Panel which shall recommend one of the procedures outlined immediately below in (2) to be used in the further handling of the dispute.

(2) The Secretaries may either accept or reject the recommendation but, if the latter, they must recommend one of the procedures themselves:

(*a*) take no further action;

(*b*) appoint a neutral board to make non-binding settlement recommendations;

(*c*) refer to final and binding arbitration; or

(*d*) submit to a "final offer selection" procedure.

Procedure 2(d) is a modified version of the final offer provision found in the administration's proposal contained in H.R. 3596. The offers that a party submits may be staggered in time so that a party can be aware of what its adversary has offered. In addition, the final offers may be subsequently revised by eliminating those matters on which the parties may reach an unconditional agreement, to encourage continuing efforts on the part of the parties to negotiate an agreement themselves. Strikes or lockouts are prohibited throughout the handling of the dispute and for 30 days after the exhaustion of the last procedure possible under section 10. The provisions of section 10 automatically apply to any unresolved dispute.

Amends the Railroad Unemployment Insurance Act to eliminate the payment of unemployment benefits to striking employees as well as those employees who refuse to cross picket lines.

Other revisions of the Railway Labor Act proposed in S. 2060 are the following:

(1) Amend Section 1 Fifth to eliminate supervisors from coverage of the Act. A new section, Section 1 Eighth, is added defining the term "supervisor."

(2) Amend the definition of "representative" in Section 1 Sixth to prohibit any use of a ratification procedure as a condition precedent to a valid collective bargaining agreement. In addition, Section 2 Second is amended to require representatives to be vested with full authority to enter into agreements without membership ratification.

(3) Amend Section 2 Third to permit an involved carrier to be a party to any representational proceeding.

(4) Amend Section 2 Fourth to permit employees in a representation proceeding to elect not to be represented.

(5) Amend Section 2 Ninth to provide that (a) an involved carrier may raise the question of representation of its employees and (b) the National Mediation Board must resolve jurisdiction representation disputes even where an election is not required, insulating the NMB by giving it authority to appoint ad hoc neutrals to determine this type of dispute.

(6) Amend Section 3 to abolish the National Railroad Adjustment Board, while retaining the Public Boards and special boards of adjustment. Existing criteria for judicial review of board awards are retained, as well as the *Chicago River* doctrine prohibiting strikes over minor disputes. Compensation for neutrals is shifted from the government to the parties.

(7) Amend Section 5 First (b) to eliminate the explicit requirement that the NMB proffer arbitration as a last resort in major disputes and to revise the section in order to reflect the changes recommended in Section 10.

(8) Amend Section 7 Third (e) to provide that all expenses of arbitration boards involving compensation of neutral arbitrators shall be borne by the parties.

(9) Add a new section, Section 15, to prohibit secondary boycotts.

(10) Change the term of office for members of the National Mediation Board from 3 to 5 years.

Miscellaneous: H.R. 9089 represents the position of the Air Transportation Association of America, the Association of American Railroads, and the National Railway Labor Conference. The above summary is based for the most part on materials prepared by those organizations.

H.R. 9088, sponsored by Messrs. Harvey, Anderson of Illinois, Broyhill of North Carolina, Cederberg, Chamberlain, Conable, Dellenback, Derwinski, Devine, Erlenborn, Frelinghuysen, Frenzel, Frey, Gettys, Halpern, Harrington, Hosmer, Hutchinson, Keating, Keith, Lloyd, McClory, McCloskey, McDonald of Michigan, and Morse, referred to Committee June 14, 1971

To amend the Railway Labor Act to provide more effective means for protecting the public interest in national emergency disputes involving the railroad and airline transportation industries, and for other purposes

Identical bills

H.R. 9089, Messers. Harvey, Mosher, Rees, Robison of New York, Roybal, Schwengel, Shriver, Stafford, J. William Stanton, Vander Jagt, Whitehurst, Bob Wilson, and Zablocki, June 14, 1971

H.R. 9571, Messrs. Harvey, Brown of Michigan, Coughlin, Price of Tennessee, Grover, Gude, Latta, Lent, McCollister, Robinson of Virginia, Schneebeli, Sebelius, Steiger of Wisconsin, Thone, Veysey, and Williams, July 1, 1971

H.R. 9820, Messrs. Harvey, Burke of Florida, Collier, and McKevitt, July 15, 1971

H.R. 10433, Messers. Harvey, Burleson of Texas, Byrnes of Wisconsin, Duncan, Scott, and Edwards of Alabama, August 5, 1971

H.R. 10491, Mr. Hastings, August 6, 1971

H.R. 10781, Messers. Harvey, Don H. Clausen, Cleveland, Fisher, Forsythe, Hamilton, Hastings, Hunt, Nelsen, and Ware, September 21, 1971

These bills picked up three additional cosponsors on July 15, 1971, according to the Congressional Record for that day [p. H6804, daily ed.]. These are Messrs. Burke of Florida, Collier, and McKevitt.

Coverage: Labor disputes in the railroad and airline transportation industries.

Provisions: Provides for a 60-day cooling-off period if, in the judgment of the National Mediation Board, a dispute should "threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." Requires National Mediation Board to recommend actions privately to the President, within the first 30 days of the 60-day cooling-off period. During the 60-day period, authorizes President to create an emergency board of impartial members, the number to be determined by the President, to investigate the dispute and report on it, such report to include substantive recommendations for settlement. If a board is created, its report shall be made within the 60-day cooling-off period.

If no agreement is reached by the end of the 60-day period and the dispute remains as a substantial threat to the flow of interstate commerce, requires the President to proceed under the provisions of sections 305, 306, and 307 of Title III until final agreement is reached. The sequence with which he proceeds is optional with the President except that he must proceed first under the provisions of section 306 ("selective strike") unless he finds that the national health and safety would thereby be immediately imperiled.

The section 305 option prescribes an additional 30-day cooling-off period, with continued bargaining mediated by the National Mediation Board and no changes, except by agreement, in terms and conditions of employment.

The section 306 provision permits a selective strike after at least 10 days' notice to the carriers concerned. A selective strike is defined for the railroad industry but not for the airline industry. In the railroad industry, a selective strike is one against not more than two carriers operating in any one of the eastern, western, or southeastern regions, provided that the total revenue ton-miles transported

during the preceding year by the struck carriers in any region represented not more than 20 percent of total revenue ton-miles in that region. The revenue ton-mile limitation does not apply in a region where only one carrier is struck. Requires the maintenance of essential transportation services during a selective strike. Provides that agreements reached with struck carriers be offered intact to other carriers; allows selective strikes against carriers not accepting such agreement.

The section 307 option is a "final offer selection" provision similar to the administration's proposal contained in H.R. 3596, with some procedural differences. Requires each party to the dispute to submit within 5 days one sealed final offer to the Secretary of Labor, or two if the party wishes. If any party fails to submit a final offer, the last offer made during previous bargaining would be considered its final offer. Offers shall be restricted to matters arising from the section 6 notices which began the bargaining. Provides that the parties may select a three-member panel to act as "final offer selector" and that if the parties are unable to select the panel, it would be appointed by the President. Provides that for not more than 30 days the panel hold hearings and the parties continue bargaining; if no agreement is reached during that time, the panel then opens the final offers and makes a selection. Specifies criteria for making selection. The panel does not identify the source of the selected offer, and returns all other offers without disclosure of contents. Prohibits panel from compromising or altering the final offer that it selects. Panel's choice shall represent the contract between the parties, and shall be conclusive unless found arbitrary and capricious.

Miscellaneons: This proposal (H.R. 9088 and identical bills H.R. 9089, H.R. 9571, H.R. 9820, H.R. 10433, H.R. 10491, and H.R. 10781) had, as of September 21, 1971, a total of 73 sponsors from both sides of the aisle.

The proposal is a modification of an earlier one, introduced May 13, 1971, by Representative Harvey as H.R. 8385. For differences between the two, see the section of this report on H.R. 8385.

H.R. 8385, Sponsored by Mr. Harvey, Referred to Committee May 13, 1971

To amend the Railway Labor Act to provide more effective means for protecting the public interest in national emergency disputes involving the railroad and airline transportation industries, and for other purposes

Coverage: Labor disputes in the railroad and airline transportation industries.

Provisions: H.R. 8385 is an earlier version of H.R. 9088, introduced by Mr. Harvey on Jnne 14, 1971. The following are the differences between the two bills:

1. If the President should switch from the selective strike provision (section 306) to either the section 305 or 307 option, under H.R. 9088 the selective strike would end immediately, under H.R. 8385 within two days.

2. The definition of "selective strike" contained in both bills applies to the railroad industry, hut H.R. 8385 does not state this whereas H.R. 9088 adds the phrase "in the railroad industry."

3. Partial operation requirements during a selective strike are directed by the President in H.R. 9088, hy the Secretary of Transportation in H.R. 8385.

4. H.R. 9088 specifies that final offers under section 307 "shall be restricted to matters arising from the notices filed under section 6 of the Act concerning the particular dispnte." H.R. 8385 has no such limitation.

5. H.R. 9088 requires the "final offer selection" panel in making its choice to consider the report of any emergency board which may have been created in connection with the dispute. H.R. 8385 makes no such requirement, and in fact may he construed to prohibit review hy the panel of the emergency board's report.

6. H.R. 9088 states explicitly what seems to be only implicit in H.R. 8385, that "thc final offer selected hy the panel shall be deemed to represent the contract between the parties." H.R. 9088 also adds that the final offer selected "shall be conclnsive unlss found arbitrary and capricious."

H.R. 2357, sponsored by Mr. Pickle, referred to Committee Jan. 26, 1971

To amend section 10 of the Railway Labor Act to settle emergency transportation labor disputes

Coverage: Labor disputes in railroad and airline industries. The bill consists of an amended section 10 for the Railway Labor Act.

Provisions: As is the case now under the Railway Labor Act, directs the National Mediation Board to notify the President if an unsettled rail or airline

labor dispute should, in the Board's judgment, threaten substantially to interrupt interstate or foreign commerce to a degree such as to deprive any section of the country of essential transportation service.

When the President is so notified, he may proceed under either of two broad alternatives: (1) If he determines that the dispute is not one of immediate urgency, he may proceed through another mediation board, termed an Emergency Board. On the other hand, (2) if he determines that the national defense, health, or safety is imperiled, he may immediately proceed under remedies involving a Special Board (arbitration); limited seizure of the concerned carriers; or a Congressional remedy in which the President specifically recommends a settlement, or any combination of these three items.

If the Emergency Board route is completed without settlement, then the dispute may proceed through the remedies of arbitration, seizure, or Congressional relief, simply on the standard that the dispute threatens to interrupt essential transportation service in a given area. It is not necessary that a national emergency be found in order to reach the final three alternatives.

Authorizes the President to take any of several alternatives at each step along the way, or to select a procedure incorporating several aspects of the choices involved. Permits him to take no action, if he so desires, leaving the dispute open to normal bargaining and strike remedies.

The "arsenal of weapons" approach in this bill is intended to create uncertainty as to the Presidential course of action, and also to provide options which are burdensome and disagreeable to one or both sides; the purpose is to motivate good-faith bargaining.

The following is a schematic outline of the procedures proposed in H.R. 2357, supplied by the office of Representative Pickle:

National Mediation Board

Reports if a dispute exists which threstens "substantially to interrupt interstate or foreign commerce to s degree such as to deprive any section of the country of essential transportation service."

↓

President

"In his discretion," may thereupon create an Emergency Bosrd; or, if he determines thst the "dispute immediately imperils the national defense, health or safety, he may proceed under the provisions of subsection 10 (b), (c), or (d)."

Emergency Board (Mediation)

1) Size & membership is choice of President;
2) Bosrd must report within 60-120 days of appointment;
3) If instructed by President, Board report will contain findings of fact and/or recommendations for settlement.

↓

President

1) Holds Emgy Bd report for 30 days cooling-off;
2) After cooling-off, President may return dispute to Emgy Bd for 30 days consideration and for their recommendation on whether to proceed under (b), (c) or (d);
3) President may proceed under (b), (c) or (d) or any combination thereof; he is not bound to follow the recommendations of the Emgy Bd as to which procedures to follow;
4) If President elects to proceed under (b), (c) or (d), he may impose the recommended settlement of the Emgy Bd as interim working conditions, pending the time required to exhaust procedures of (b), (c) and (d);
5) Whenever President determinea to pursue (b), (c) or (d) (whether or not an Emgy Bd was used) he shall notify the parties 10 days before entering such procedures--such notice need not specify to the parties which of the steps or combination thereof will be taken.

(b). Special Board (Arbitration)

1) Parties have 10 days to select members and procedures; if they fail to do so, President performs this function;
2) Board is composed of 5 members, 3 public, one labor and one management;
3) Board has from 60-120 days from appointment to report;
4) Board has power to make a settlement binding on the parties for a period of the Board's choice, but less than 2 years.

(c). Seizure of concerned carriers

1) Management of carriers is continued by Secretary of Commerce;
2) All corporate activities continue as in the normal course of business;
3) Working conditions remain the same unless the President imposed the Emgy Bd recommendations.

(d). Congressional remedy.

1) If the President elects to proceed under the provisions of this subsection, "he shsll transmit to Congress such recommendations for legislation as he may determine are required."

Miscellaneous: H.R. 2357 is identical with H.R. 8446, introduced by Representative Pickle in the 91st Congress, Mar. 6, 1969. It is similar to H.R. 5638, sponsored by Mr. Pickle in the 90th Congress, except that bill included no seizure provision.

H.R. 5347, Sponsored by Mr. Dingell, Referred to Committee Mar. 2, 1971

To amend the Railway Labor Act to establish a method for settling labor disputes in transportation industries subject to that Act

Coverage: Labor disputes in railroad and airline industries. The bill consists of a section 10A (a) through (g), to be inserted after the present section 10 of the Railway Labor Act.

Provisions: If no settlement to the dispute has been reached by the final day of the 30-day period after the Emergency Board has made its report, provides that the President shall establish a special 5-member board to assist the parties in resolving the dispute. Permits each party to appoint one board member and the President to appoint three, including chairman.

Requires the carriers involved in the dispute to submit to the special board, not later than 15 days after establishment of the board, a last offer of settlement of the issues in dispute. Provides that within 20 days thereafter the National Mediation Board shall take a secret ballot of the employees of each carrier involved in the dispute on the question of whether they wish to accept the offer.

Makes such offer the binding settlement to the dispute if a majority of employees vote to accept the proposal. If the carriers' offer is rejected, requires the employee representatives to submit a counter-offer to the carriers within 5 days, and requires the carriers to accept or reject the counter-offer within another 5 days.

At the expiration of 60 days, unless the dispute is settled, the special board shall report to the President the status of the dispute, such report to be made public. The report shall include an evaluation of the issues in dispute, the positions of the parties and of those proposals for settlement which appear most reasonable and appropriate for the protection of the public interest.

Authorizes the President to direct any carrier or carriers subject to the provisions of section 10A, if the parties have not reached agreement within 10 days after issuance of the report, to transport any goods, material, equipment, or personnel as he may deem necessary to protect the health, welfare, safety, or public interest of the nation. Provides that the wages, hours, and working conditions in effect when the dispute began shall be fully applicable without change, except by agreement between the parties, or as modified by Presidential order.

Grants the United States district courts power to prevent or restrain violations of this section (10A).

APPENDIX

COMPARISON OF MAJOR PROVISIONS OF DISPUTE-SETTLEMENT PROPOSALS REFERRED TO HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE THROUGH SEPT. 30, 1971, 92d Cong.

Bill number	H.R. 3596 (id. bills 901, 3639, 4116, 5377)	H.R. 3595 (id. bills 3985, 4620, 4996, 5870)	H.R. 9989	H.R. 9088 (id. bills 9089, 9571, 9820, 10433, 10491, 10781) earlier version: H.R 8395	H.R. 2357	H.R. 5347
Covarage	Transportation industries	Rails; airline coverage not clear.	Rails and airlines	Rails and airlines	Rails and airlines	Rails and airlines.
Provisions	Permits 1 of 3 new options: (1) 30-day cooling off; (2) strike, with partial operation; (3) final offer selection. Also includes revisions of RLA othar than sec. 10.	Permits strikes, including selective strikes, with partiel operation.	Permits 1 of these: (1) nonbinding settlement recommendations; (2) finel, binding arbitration; (3) final offer selection. Also includas revisions of RLA not directly related to dispute settlement.	Permits 3 new options: (1) selective strike, with partiel oparation; (2) 30-dey cooling off; (3) final offer selection.	Arsenal-of-weapons approach, including binding arbitration, seizure, and ad hoc congressionel remedy.	Secret ballot of employees on carriers' last offer; strikes permitted, with partial operation.
Miscellaneous	Administration proposal	Supported by AFL-CIO, and rail unions.	Proposal of Air Transportation Association; Association of American Railroads; and National Railway Labor Conference.	Has 55 congressional sponsors, from both parties.	Similar to Mr. Pickle's proposals in 91st and 90th Cong.	

[H.R. 901, 92d Cong., 1st sess., introduced by Mr. Mayne on January 22, 1971;
H.R. 3596, 92d Cong., 1st sess., introduced by Mr. Staggers (for himself and Mr. Springer) (by request) on February 4, 1971;
H.R. 3639, 92d Cong., 1st sess., introduced by Mr. Lloyd (for himself, Mr. Mayne, Mr. Dennis, Mr. McCloskey, and Mr. Steiger of Arizona) on February 4, 1971;
H.R. 4116, 92d Cong., 1st sess., introduced by Mr. Gerald R. Ford (for himself, Mr. Mayne, Mr. Lloyd, Mr. Nelsen, and Mr. Harvey on February 10, 1971; and
H.R. 5377, 92d Cong., 1st sess., introduced by Mr. Broomfeld on March 2, 1971, are identical as follows:]

A BILL

To provide more effective means for protecting the public interest in national emergency disputes involving the transportation industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergeney Publie Interest Protection Act of 1971".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds:

(1) That present proeedures for dealing with national emergency disputes under the Railway Labor Act tend to encourage resort to governmental intervention in such dis-

putes rather than utilization of the collective bargaining processes to solve labor-management disputes;

(2) That present procedures for dealing with disputes in the transportation industry, in general, have proved insufficient to prevent serious disruptions of transportation services.

(b) The Congress declares it to be the purpose and policy, through the exercise by Congress of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible, that no strike or lockout in the transportation industry, or a substantial part thereof will imperil the national health or safety—

(1) by providing a single set of procedures for dealing with national emergency disputes in the transportation industries;

(2) by establishing procedures which will encourage the parties to make effective use of various private collective bargaining techniques to resolve disputes;

(3) by establishing procedures which will both protect the public interest and recognize the interests of the parties involved in the dispute;

(4) by providing the President with appropriate alternative means for dealing with national transportation emergency disputes;

(5) by amending the Railway Labor Act to eliminate reliance upon governmental machinery or intervention for adjusting grievances and for collective bargaining in the railroad and airline industries; and

(6) by establishing a National Special Industries Commission to study and make recommendations concerning those industries which are or may be particularly vulnerable to national emergency disputes.

TITLE I—AMENDMENTS TO THE LABOR-MANAGEMENT RELATIONS ACT RELATING TO EMERGENCY DISPUTES IN THE TRANSPORTATION INDUSTRY

SEC. 101. (a) Title II of the Labor-Management Relations Act, as amended, is redesignated as title II, part A.

(b) (1) Section 208 (a) is amended by substituting a colon for the period at the end thereof and by adding the following proviso: "*Provided*, That, when such petition is sought to enjoin a strike or lockout in an industry subject to part B of this title it shall be heard and determined by a three-judge district court in accordance with section 2284 of title 28, United States Code."

(2) Section 208 (c) is amended by substituting a semicolon for the period at the end thereof and adding the following: "except that where the proviso in section 208 (a) is applicable, appeal shall be to the United States Supreme

Court in accordanee with section 1253 of title 28, United States Code."

(c) Section 212 is hereby repealed.

SEC. 102. Title II of the Labor-Management Relations Act, as amended, is hereby further amended by adding a new part II B at the end of part II A to read as follows:

"PART B—ALTERNATIVE PROCEDURES FOLLOWING INITIAL EIGHTY-DAY COOLING OFF

"SEC. 213. APPLICABILITY OF THIS PART.—This part shall apply only to the following transportation industries: (1) railroads, (2) airlines, (3) maritime, (4) longshore, and (5) trucking.

"SEC. 214. If no settlement is reached before the injunction obtained pursuant to section 208 of this Act is discharged, the President may, within ten days, invoke any one, but only one, of the procedures set forth in sections 217, 218, and 219 of this Act with regard to a national emergency dispute subject to this part.

"SEC. 215. Notice of which procedure the President has selected must immediately be transmitted to the Congress, unless the Congress has adjourned or is in a recess in which case such notice shall be transmitted as soon as Congress reconvenes. Such procedure shall remain in effect unless, within ten days after the President invokes such procedure,

either House passes a resolution stating that that House rejects the procedure invoked by the President.

"SEC. 216. If either House passes a resolution pursuant to subsection (c) of this section rejecting the procedure invoked by the President, or, if the President does not choose to invoke any of the procedures set forth in sections 217, 218, and 219 of this Act, the President shall submit to the Congress a supplemental report including such recommendations as he may see fit to make.

"SEC. 217. ADDITIONAL COOLING-OFF PERIOD.—The President may direct the parties to the controversy to refrain from making any changes, except by agreement, in the terms and conditions of employment for a specified period of not more than thirty days from the date of his direction. During such period the parties shall continue to bargain collectively, and the board of inquiry may continue to mediate the dispute with the assistance of, and in close coordination with, the director of the Federal Mediation and Conciliation Service.

"SEC. 218. PARTIAL OPERATION.—(a) The President may appoint a special board of three impartial members for the purpose of having the board make the following determinations:

"(1) Whether and under what conditions a partial strike or lockout in lieu of a full strike or lockout in an

entire industry or substantial part thereof could take place without imperiling the national health or safety; and

"(2) Whether, under such conditions, the extent of such partial strike or lockout would, in the judgment of the board, appear to be sufficient in economic impact to encourage each of the parties to make continuing efforts to resolve the dispute.

"(b) (1) If the board makes a determination that there are conditions under which a partial strike or lockout can take place in accordance with the criteria specified in subsection (a), it shall issue an order specifying the extent and conditions of partial operation that must be maintained: *Provided,* That, in no event, shall the order of the board place a greater economic burden on any party than that which a total cessation of operations would impose.

"(2) If the board makes a determination that a partial strike or lockout cannot take place in accordance with such criteria, it shall submit a report to the President.

"(c) The parties shall not interfere by resort to strike or lockout with the partial operation ordered by the board. The board's order shall be effective for a period determined by the board, but not to exceed one hundred and eighty days.

"(d) The board's order or any modification thereof shall be conclusive unless found arbitrary or capricious by

the district court which granted the injunction pursuant to section 208 of this Act.

"(e) (1) The board shall issue its order no later than thirty days from the date of its appointment by the President, unless the parties, including the Government, agree to an extension of time but such extension shall reduce pro tanto the maximum effective period of the board's order.

"(2) On notice to the parties, the board may at any time during the period of partial operation modify its order as it deems necessary to effectuate the purposes of this section.

"(f) Until the board makes its determination and during any period of partial operation ordered by the board no change, except by agreement, shall be made in the terms and conditions of employment. If the board determines that the implementation of any particular term of the existing terms and conditions of employment is inconsistent with the conditions of partial operation, it may order the suspension or modification of that term but only to the extent necessary to make it consistent with the conditions of partial operation.

"(g) The following rules of procedures shall be applicable to the board's functions under this subsection:

"(1) NOTICE OF HEARING.—Upon appointment by the President the board shall promptly notify and inform all

parties, including the Government, of the time, place, and nature of the hearings, and the matters to be covered therein.

"(2) HEARING TO BE PUBLIC.—The board shall hold public hearings, unless it determines private hearings are necessary in the interest of national security, or the parties, including the Government, agree to present their positions in writing. The record made at such hearing shall include all documents, statements, exhibits, and briefs, which may be submitted, together with the stenographic record. The board shall have authority to make whatever reasonable rules are necessary for the conduct of an orderly public hearing. The board may exclude persons other than the parties at any time when in its judgment the expeditious inquiry into the disputes so requires.

"(3) PARTICIPATION BY BOARD IN THE HEARING.—The board, or any member thereof, may, on its own initiative, at such hearing, call witnesses and introduce documentary or other evidence, including a plan for partial operation, and may participate in the examination of witnesses for the purpose of expediting the hearing or eliciting material facts.

"(4) PARTICIPATION BY PARTIES IN HEARING.—The parties, the Government, or their representatives shall be given reasonable opportunity: (A) to be present in person at every stage of the hearing; (B) to be represented adequately; (C) to present orally or otherwise any material

evidence relevant to the issues including a plan for partial operation; (D) to ask questions of the opposing party or a witness relating to evidence offered or statements made by the party or witness at the hearing, unless it is clear that the questions have no material bearing on the credibility of that party or witness or on the issues in the case; (E) to present to the board oral or written argument on the issues.

"(5) STENOGRAPHIC RECORDS.—An official stenographic record of the proceedings shall be made. A copy of the record shall be available for inspection by the parties.

"(6) RULES OF EVIDENCE.—The hearing may be conducted informally. The receipt of evidence at the hearing need not be governed by the common law rules of evidence.

"(7) REQUESTS FOR THE PRODUCTION OF EVIDENCE.—The board shall have the power of subpena. It shall request the parties to produce any evidence it deems relevant to the issues. Such evidence should be obtained through the voluntary compliance of the parties, if possible.

"(h) If a settlement is reached at any time during the hearing, the board shall adjourn the hearing and report to the President within ten days the fact that a settlement has been reached and the terms of such settlement.

"(i) (1) Members of the board shall receive compensation at a rate of up to the per diem equivalent of the rate

for GS–18 when engaged in the work of the board as prescribed by this Act, including traveltime, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

"(2) For the purposes of carrying out its functions under this Act the Board is authorized to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 (b) of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

"SEC. 219. FINAL OFFER SELECTION.—(a) (1) The President may direct each party to submit a final offer to the Secretary of Labor within three days. Each party may at the same time submit one alternative final offer. The Secretary of Labor shall transmit the offers to the other parties simultaneously.

"(2) If a party or parties refuse to submit a final offer, the last offer made by such party or parties during previous bargaining shall be deemed that party's or parties' final offer.

"(3) Any offer submitted by a party pursuant to this

section must constitute a complete collective bargaining agreement and resolve all the issues involved in the dispute.

"(b) The parties shall continue to bargain collectively for a period of five days after they receive the other parties' offers. The Secretary of Labor may act as mediator during the period of the final offer selection proceedings.

"(c) If no settlement has been reached before the end of the period prescribed in subsection (b) of this section, the parties may within two days select a three-member panel to act as the final offer selector. If the parties are unable to agree on the composition of the panel, the President shall appoint the panel.

"(d) No person who has a pecuniary or other interest in any organization of employees or employers or employers' organizations which are involved in the dispute shall be appointed to such panel.

"(e) The provisions of section 218(h) and 218(i)(1) and (2) of this Act shall apply to the panel.

"(f) The panel shall conduct an informal hearing in accordance with section 218(g) of this Act insofar as practicable, except that—

"(1) the Government shall have no right to participate; and

"(2) the thirty-day period in which the panel shall complete its hearings and reach its determination shall

run from the time that the President directed the parties to submit final offers.

"(g) The panel shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed by this section.

"(h) From the time of appointment by the President until such time as the panel makes its selection, there shall be no communication by the members of the panel with third parties concerning recommendations for settlement of the dispute.

"(i) Beginning with the direction of the President to submit final offers and until the panel makes its selection, there shall be no change, except by agreement of the parties, in the terms and conditions of employment. In no instance shall such period exceed thirty days.

"(j) The panel shall not compromise or alter the final offer that it selects. Selection of a final offer shall be based on the content of the final offer and no consideration shall be given to, nor shall any evidence be received concerning, the collective bargaining in this dispute including offers of settlement not contained in the final offers.

"(k) The panel shall select the most reasonable, in its judgment, of the final offers submitted by the parties. The panel may take into account the following factors:

"(1) past collective bargaining contracts between

the parties including the bargaining that led up to such contracts;

"(2) comparison of wages, hours, and conditions of employment of the employees involved, with wages, hours, and conditions of employment of other employees doing comparable work, giving consideration to factors peculiar to the industry involved;

"(3) comparison of wages, hours, and conditions of employment as reflected in industries in general, and in the same or similar industry;

"(4) security and tenure of employment with due regard for the effect of technological changes on manning practices or on the utilization of particular occupations; and

"(5) the public interest, and any other factors normally considered in the determination of wages, hours, and conditions of employment.

"(l) The final offer selected by the panel shall be deemed to represent the contract between the parties.

"(m) The determination of the panel shall be conclusive unless found arbitrary and capricious by the district court which granted the injunction pursuant to section 208 of this Act.

"SEC. 220. (a) Any board or panel established under part B of title II of this Act may act by majority vote.

"(b) A vacancy on any such board or panel shall not impair the right of the remaining members to exercise all of the powers of such board or panel. In case of a vacancy due to death or resignation, the President may appoint a successor to fill such vacancy.

"SEC. 221. Whenever the term 'Government' is used in title II of this Act it shall be deemed to mean the United States Government acting through the Attorney General or his designee."

TITLE II

AMENDMENT TO THE RAILWAY LABOR ACT

SEC. 201. The National Meditation Board is hereby renamed the Railroad and Airline Representation Board, and the functions of the Railroad and Airline Representation Board shall be those specified in section 202 (f) of this Act.

SEC. 202. The Railway Labor Act is further amended as follows:

(a) Section 2 Seventh of title I is amended to read as follows:

"Seventh. No carrier, its officers or agents, or representatives shall change or seek to change the rates of pay, rules, or working conditions as embodied in agreements or arrangements except in the manner prescribed in such agreements and in title I, section 6 of this Act, as amended."

(b) Section 3 First (i) of title I is amended by striking the period following the words "upon the disputes" and inserting thereafter: ": *Provided, however,* That all such disputes shall no longer be referred to the Adjustment Board commencing sixty days after the effective date of this amendment to the Act.

"All such disputes which are not so referred within such period and all such disputes arising thereafter shall be submitted to arbitration in accordance with the following procedure. Upon failing to reach a satisfactory adjustment at the level of discussion hereinbefore mentioned, the parties shall within five days seek to reach mutual agreement on the selection of an arbitrator. If the parties fail to reach agreement within such period, the Federal Meditation and Conciliation Service shall submit to the parties a list of five qualified arbitrators. Each party shall alternately reject a different arbitrator named on the list until one arbitrator remains who shall thereupon arbitrate the dispute. To the extent that the parties are unable to agree to the rules for arbitration, including the distribution of costs, the arbitrator shall make all necessary rules therefor.

"All disputes which have been referred to the Adjustment Board may be removed by the grievant to the arbitration process herein if the dispute is not then being heard by the Adjustment Board.

"The aforementioned method of arbitration shall prevail with respect to such disputes until such time as the collective bargaining agreements between the parties contain no-strike, no-lockout clauses and provisions for grievance machinery terminating in final, binding arbitration.

"The Adjustment Board shall be dissolved after it has processed to completion all of the disputes before it or upon two years from the effective date of this amendment to the Act, whichever first occurs. If all the disputes before the Adjustment Board have not been processed to completion by the time of the Board's dissolution date, all such disputes shall be removed by the grievant to the arbitration process hereinabove described."

(c) Section 3 Second of title I is amended by adding the following language at the end of the first paragraph following the words "jurisdiction of the Adjustment Board.";

"The provisions of paragraph (i) of this section, as amended, shall apply in the same manner and to the same extent with respect to system, group or regional boards of adjustment."

(d) Section 3 Second of title I is amended by adding the following language at the end of section 3 Second following the words "jurisdiction of the Adjustment Board.":

"No dispute which has not been referred to a special

board of adjustment by the effective date of this amendment to the Act may be referred to such special board thereafter."

(e) Section 4 Second of title I is amended by striking the word "mediation" in the third sentence of paragraph Second and inserting therefor the word "representation".

(f) Both paragraphs of Section 4 Fifth of title I are amended to read as follows:

"Fifth. The functions of the Representation Board shall be generally those relating to the determination of bargaining representatives including duties particularized in title I, section 2 Eighth and Ninth of this Act, as amended."

(g) Section 4 of title I is further amended by adding the following paragraphs after paragraph Fifth:

"Sixth. All functions of the National Mediation Board which in the judgment of the President are primarily related to mediation shall be transferred to the Federal Mediation and Conciliation Service.

"Seventh. All cases which are being mediated by the National Mediation Board on the effective date of this amendment to the Act shall be transferred to the Federal Mediation and Conciliation Service no later than thirty days after the effective date of this amendment to the Act. All cases arising thereafter under this Act, as amended, requiring mediation, shall be subject to the jurisdiction of the Federal Mediation and Conciliation Service.

"Eighth. All unexpended appropriations for the operation of the National Mediation Board that are available at the time of the dissolution of the Board shall be apportioned between the Railroad and Airline Representation Board and the Federal Mediation and Conciliation Service by the President according to the relative needs of each based on the division of functions prescribed herein."

(h) Section 6 of title I is amended to read as follows:

"Section 6. Carriers and representatives shall give the other at least sixty days written notice of an intended modification or termination in agreements or arrangements affecting rates of pay, rules, or working conditions. The party desiring such change or termination shall also notify the Federal Mediation and Conciliation Service of the existence of a dispute within thirty days after such notice to the other party, provided no agreement has been reached by that time. The parties shall continue in full force and effect, without resorting to strike or lockout or other economic coercion, all the terms and conditions of the existing agreement or arrangement for a period of sixty days after such notice is given or until the expiration date of the agreement containing the rates of pay, rules, or working conditions sought to be changed, provided such agreement exists, whichever occurs later.

"With respect to rates of pay, rules, or working condi-

tions for which there exists no fixed expiration date, the time for serving the sixty-day notice in the first instance, and the first instance only, shall be established by agreement of the parties to the arrangement; if they cannot agree, the party seeking to serve the sixty-day notice may invoke the arbitration procedure prescribed in section 3 First (i), as amended, in order to fix the date on which such notice may be served. In making his decision, the arbitrator shall take into account the probable intention of the parties as revealed by custom and practice with respect to past adjustment of rates of pay, rules, or working conditions. In no case, however, shall the arbitrator decide that the time for serving the first sixty-day notice shall be more than two years after the enactment of this amendment to the Act.

"The parties shall bargain collectively with respect to such intended modification or termination which means that the parties shall have the mutual obligation to meet at reasonable times and confer in good faith with respect to rates of pay, rules, and working conditions or the negotiation of an agreement and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession."

(i) Section 201 of title II is amended by striking the words "except the provisions of section 3 thereof,".

(j) Section 202 of title II is amended (1) by striking the words ", except section 3 thereof,", and (2) by adding the following language after the end of the first sentence therein:

"The functions and duties of the Representation Board, as prescribed in title I, section 4, shall apply as well to carriers by air and their employees or representatives."

(k) Section 204 of title II is amended by striking the period following the words "upon the disputes" at the end of the first sentence and inserting thereafter ": *Provided, however*, That all such disputes shall no longer be referred to such Adjustment Boards commencing sixty days after the effective date of this amendment to the Act but shall be handled in the manner specified in title I, section 3 First (i), as amended. Such adjustment boards shall be dissolved after they have processed to completion all of the disputes before them or upon two years from the effective date of this amendment to the Act, whichever first occurs. If all the disputes before such adjustment boards have not been processed to completion by the time of the Boards' dissolution date, all such disputes shall be removed by the grievant to the arbitration process prescribed in title I, section 3 First (i), as amended."

SEC. 301. The National Special Industries Commission is hereby established. The Commission shall be composed of seven members all of whom shall have a background by reason of education or experience in labor relations.

(a) The Commission members shall be appointed by the President for a term not to exceed two years.

(b) The Commission members shall receive compensation at a rate of up to the per diem equivalent of the rate for GS–18 when engaged in the work of the Commission, together with any necessary travel and subsistence expenses.

(c) The Commission shall be authorized to study and investigate industries (determined by the Secretary of Labor to be particularly vulnerable to national emergency disputes) combinations or groups thereof, and problems relating thereto, including but not limited to—

(1) the ways and means by which the collective-bargaining process might be improved, altered, revised, or supplemented so as to avoid or minimize strikes and lockouts which effect an entire industry, or region, or a substantial part thereof;

(2) the effectiveness and usefulness of various forms of mediation, conciliation, arbitration, and other possible procedures and methods for aiding or supplementing the collective-bargaining process;

(3) the administration, operation, and possible need

for revision of this Act and its effect on collective bargaining, strikes, or lockouts affecting an entire industry or region, or substantial portion thereof;

(4) such other problems and subjects which relate in any way to collective bargaining, strikes, or lockouts as the Commission deems appropriate.

(d) A vacancy in the membership of the Commission shall not affect the powers of the remaining members to execute the functions of the Commission, and shall be filled in the same manner as the original appointment was made. The President shall designate a chairman and a vice chairman from among its members.

(e) In carrying out its duties, the Commission or any duly authorized subcommittee thereof, is authorized to hold such hearings or investigations, to sit and act at such places and times, to require by subpena or otherwise the attendance of such witnesses and production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, to make such expenditures as it deems advisable. The Commission may make such rules respecting its organization and procedures as it deems necessary: *Provided, however,* That no recommendation shall be reported from the Commission unless a majority of the Commission assent. Subpenas may be issued over the

signature of the chairman of the Commission or by any member designated by him or by the Commission, and may be served by such person or persons as may be designated by such chairman or member. The chairman of the Commission or any member thereof may administer oaths to witnesses. The cost of stenographic services shall be fixed at an equitable rate by the Commission. Members of the Commission, and its employees and consultants, while traveling on official business for the Commission may receive either a $50 per diem allowance or their actual and necessary expenses provided an itemized statement of such expenses is attached to the voucher.

(f) The Commission is empowered to appoint and fix the compensation of such experts, consultants, technicians, and staff employees as it deems necessary and advisable. The Commission is authorized to utilize the services, information, facilities, and personnel of the departments and establishments of the Government.

SEC. 302. The Commission shall, within a period of two years from the date of the appointment of its members, report to the President concerning its findings. Such report shall also contain any recommendations for dealing with problems caused by any weaknesses in the collective bargaining process, including any recommendations for legislation which the Commission deems necessary to the solution of such prob-

lems. The Commission may also recommend, if it deems it advisable, legislation to bring other industries within the coverage of part B of title II of the Labor-Management Relations Act, as amended.

TITLE IV

MISCELLANEOUS PROVISIONS

SEC. 401. SUITS BY AND AGAINST REPRESENTATIVES.—(a) Suits for violation of agreements or arrangements between carriers or common carriers by air and their employees or the representatives thereof, as those terms are defined in the Railway Labor Act, or between any such representatives, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any representative of employees, as defined in the Railway Labor Act, and any carrier or common carrier by air, as defined in the Railway Labor Act, shall be bound by the acts of its agents. Any such representative may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against such representative in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purpose of actions and proceedings by or against representatives in the district courts of the United States, district courts shall be deemed to have jurisdiction of a representative (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a representative, in his capacity of such, shall constitute service upon the representative.

(e) For the purposes of this section in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

SEC. 402. REPEAL.—Sections 5, 7, 8 (both), 9, and 10 of title I, and sections 203 and 205 of title II of the Railway Labor Act, as amended, are hereby repealed.

SEC. 403. INAPPLICABILITY OF THE NORRIS-LAGUARDIA ACT.—The provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable to any judicial proceeding brought under or to enforce the provisions of this Act.

SEC. 404. RIGHTS OF EMPLOYEES.—Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

SEC. 405. RAILROAD UNEMPLOYMENT INSURANCE.—Section 4 (a) (v) of the "Railroad Unemployment Insurance Act of 1938" (52 Stat. 1098) is hereby amended by inserting a semicolon following the words "at which he was last employed" and striking the remaining language in the paragraph.

SEC. 406. APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 407. SEPARABILITY.—If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

92D CONGRESS
1ST SESSION

H. R. 2357

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1971

Mr. PICKLE introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend section 10 of the Railway Labor Act to settle emergency transportation labor disputes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), is amended to read as follows:

"EMERGENCY DISPUTES

"SEC. 10. (a) (1) If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act, and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate or foreign commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation

Board shall notify the President, who may thereupon, in his discretion, create an Emergency Board to act with respect to such dispute under the provisions of this subsection. If the President determines that the dispute immediately imperils the national defense, health or safety, he may proceed under the provisions of subsection (b), (c), or (d) of this section, or under all such subsections, or under any combination of such subsections, as he may choose. If the President creates an Emergency Board, it shall investigate the facts with or without public hearings. Such Emergency Board shall be composed of such number of persons as the President may deem desirable and the President shall designate one member thereof as Chairman, except that no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier, and no employee of the Federal Government (except persons employed on a temporary or intermittent basis) shall be appointed as a member of such Emergency Board. The compensation of the members of any such Emergency Board shall be fixed by the President.

"(2) Within sixty days after the appointment of such Emergency Board or such later date (not to exceed sixty additional days) as the President may specify, if the dispute has not been settled, the Board shall report to the President with respect to the dispute. Such report shall contain one or both of the following, as the President may specify in

creating such Board: (A) A statement of the facts involved in the dispute, and (B) recommendations for the settlement of any or all of the matters in dispute. For thirty days after the Emergency Board has submitted its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

"(3) Upon the expiration of thirty days after submission of the Emergency Board's report, the President, if he determines that the dispute threatens substantially to interrupt interstate or foreign commerce to a degree such as to deprive any section of the country of essential transportation service, may proceed under the provisions of subsection (b), (c), or (d) of this section, or under all such subsections, or under any combination of such subsections; or he may request of the Emergency Board its recommendations as to which of the actions or combinations of actions specified in subsection (b), (c), or (d) of this section should be taken. When so requested, the Emergency Board, with or without public hearings and within an additional thirty days, shall make its recommendations to the President and the President is authorized to proceed under the provisions of subsection (b), (c), or (d) of this section or under all such subsections, or under any combinations thereof, as he may choose without regard to such recommendations. If the Emergency

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Board's initial report contains recommendations, as authorized herein in subsection (a) (2) (B), for the settlement of any or all of the matters in dispute, the President upon electing to proceed under the provisions of subsection (b), (c), or (d) of this section, or under all such subsections or under any combination thereof, in his discretion may invoke those recommendations as the rates of pay, rules, and working conditions for the parties to the dispute for such time as may be required to exhaust the procedures of subsection (b), (c), or (d) of this section. At least ten days before proceeding under the provisions of subsection (b), (c), or (d) of this section, or under all or any combination of such subsections, the President shall notify all parties to the dispute of his intention to so proceed. Such notice need not specify which of the actions authorized by such subsections the President will take.

"(b) (1) If the President elects to proceed under the provisions of this subsection, he shall notify the parties of his intention to establish a special board pursuant to this subsection (b). Within ten days after receipt of said notice or such other period of time as may be agreed upon by the parties, the parties may by written agreement establish a special board with authority to make a final and binding determination of matters in dispute and may also establish a

procedure therefor and thereupon the said matters in dispute shall be determined by the special board.

"(2) If the parties fail to establish a special board in accordance with the preceding paragraph, the President shall create a special board of five members, consisting of three public members to be appointed by the President (one of whom shall be designated chairman) who shall not have serve on the Emergency Board (if created under subsection (a) hereof) but who would have been eligible for appointment to it, one member to be appointed by the carrier or carriers involved and one member to be appointed by the representative or representatives of the employees involved. The special board thus created shall make a just and reasonable determination of the matters in dispute. In arriving at such just and reasonable determination, the special board may, but shall not be bound to, adopt any recommendations made by the Emergency Board, and the special board shall, so far as it deems them applicable, take into consideration the following and any other relevant circumstances:

"(A) Equality of treatment of the various classes and crafts of employees of the carrier involved;

"(B) The wages paid generally in other industries for similar kinds of work;

"(C) Changes in the level of wages paid generally in other industries;

"(D) The relationship between wages and the cost of living;

"(E) The relationship between wages and productivity;

"(F) The hazards of the employment, if any;

"(G) The training and skill required;

"(H) The degree of responsibility;

"(I) The character and regularity of the employment;

"(J) The ability of the carrier to pay existing or increased labor costs;

"(K) The effect of technological improvement;

"(L) The public interest in the development and maintenance of a safe, adequate, economical, and efficient transportation system;

"(M) The public interest in price stability and prevention of inflation.

"(3) The special board shall promptly hold hearings on the matters in dispute before it and each of the parties shall be given adequate opportunity to present evidence and be heard. The special board shall make and publish its determination within sixty days after its appointment except that the President may, in his discretion, extend such period for not more than an additional sixty days.

"(4) In the event of disagreement as to the meaning of any part or all of the special board's determination, or as to the terms of the detailed agreements or arrangements necessary to give effect thereto, any party may within twenty days after issuance of the determination apply to the special board for clarification of its report, whereupon the special board shall reconvene and shall promptly issue a further determination clarifying its prior determination with respect to the matters raised by any application for clarification. Such further determination may, in the discretion of the special board, be made with or without a further hearing.

"(5) Except as hereinafter provided in paragraph (6) of this subsection, the determination of a special board shall be final and binding upon the parties for the period prescribed by the special board, but in no event shall such period exceed two years from the date of the determination by the special board. A determination by a special board, unless set aside in judicial proceedings as hereinafter provided, shall be enforcible by appropriate proceedings in the United States District Court for the District of Columbia, the United States district court for any district in which proceedings of the special board were held, or the United States district court for any district in which any party to the proceeding before the special board is doing business. Any strike, in-

cluding any concerted stoppage of work by employees, or any concerted slowdown, sitdown, walkout, or other concerted interruption of operations by employees, or any lockout by a carrier with respect to matters in dispute covered by a determination of a special board, shall be unlawful.

"(6) Within thirty days after the issuance of a determination (or clarification if applied for pursuant to paragraph (4) hereof) by a special board, any carrier or organization of employees which was a party to the proceeding before the special board and is aggrieved by the special board's determination may obtain a review of such determination in any United States district court in which the determination shall be enforcible as provided in paragraph (5) of this subsection, by filing in such court a written petition praying that the determination by the special board be set aside or modified together with a copy of the record before the special board certified by the Chairman of the board as provided in section 2112 of title 28, United States Code. A copy of such petition shall be served by the party filing it on each member of the special board and the other party or parties to the proceeding before the special board. Upon the filing of such petition and record, the court shall have jurisdiction to set aside in whole or in part the determination of the special board, but only on the grounds that the determination was based on fraud or corruption, or was

not in accordance with this section or with the Constitution of the United States. In no event shall the court have jurisdiction to review or set aside a determination of a special board on the ground that rates of pay, rules, or working conditions prescribed therein are not just and reasonable. In the event that any determination by a special board is set aside in whole or in part, the case shall be remanded to the special board for further proceedings in accordance with the decision of the court or if it is not possible for the same special board to conduct such further proceedings, the President shall appoint a new special board for that purpose unless within twenty days after the court's decision the parties do so.

"(7) The commencement of review proceedings pursuant to this paragraph shall not, unless specifically ordered by the court, operate as a stay of the special board's determination.

"(8) At the expiration of twenty days from the decision of the district court upon the petition filed as aforesaid, the judgment of the court shall be final unless during said twenty days either party shall appeal therefrom to the United States court of appeals. The decision of the court of appeals shall be subject to review by the Supreme Court upon writ of certiorari or certification as provided in section 1254 of title 28 of the United States Code.

"(c) (1) If the President elects to proceed under the provisions of this subsection, he shall direct the Secretary of Commerce (hereafter in this subsection referred to as the 'Secretary') to take possession in the name of the United States of any or all of the facilities, equipment, or other property of any carrier which is a party to the dispute, and to operate or arrange for the operation thereof and to do all things necessary for, or incidental to, such operation. The President may authorize the Secretary to act through or with the aid of such public or private instrumentalities or persons as he may designate. Except so far as the Secretary shall otherwise provide from time to time, the managements of the carriers, possession of which is taken under authority of this paragraph, shall continue their functions, including the collection and disbursement of funds, in the usual and ordinary course of business in the names of their respective carriers and by means of any instrumentalities used by such carriers. Except so far as the Secretary may otherwise direct, existing rights and obligations of such companies shall remain in full force and effect, and there may be made in due course, payments of dividends on stocks, and of principal, interest, sinking funds, and all other distributions upon bonds, debentures, and other obligations and expenditures, for other ordinary business purposes. The possession and operation by the United States under this paragraph of such equipment and

facilities shall not render inapplicable any State or Federal law concerning health, safety, security, or employment standards, and the Secretary shall comply with such laws as if the carriers were privately operated.

"(2) The wages, hours, conditions, and other terms of employment effective at the time of taking possession by the United States under this paragraph shall be maintained without change, except for changes agreed upon by the parties to the dispute, or except as provided in subsection (a) (3) of this section.

"(3) The facilities, equipment, and property taken under authority of this subsection shall be returned to the carrier as soon as practicable, but in no event later than thirty days after the dispute in question has been settled. If the dispute is not settled such facilities, equipment, and property shall be returned to the carrier at the end of two years after the Secretary took possession thereof.

"(d) If the President elects to proceed under the provisions of this subsection, he shall transmit to Congress such recommendations for legislation as he may determine are required.

"(e) An Emergency Board or a special board shall be created separately in each instance, except that concurrent and related disputes involving more than one carrier or more than one group of employees may be referred to a single

board. Such boards shall have authority to conduct investigations and take testimony at any place within the United States. For the purpose of any hearing conducted by any such board, such board shall have the authority conferred by the provisions of sections 9 and 10 (relating to the attendance and examination of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act (15 U.S.C. 49, 50). Whenever practicable any such board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

"(f) There are hereby authorized to be appropriated such sums as may be necessary for the expenses of emergency and special boards, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of such board. All expenditures of such board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"(g) Any determination by a special board shall, for all purposes of this Act, be regarded as a part of the collective-bargaining agreement between the parties to the dispute and may be amended by mutual agreement of such parties.

"(h) Every report of an Emergency Board and every determination of a special board shall contain an estimate of

any increased cost to the carrier or carriers resulting from the recommendation or determination and a copy of such estimate shall be certified to the Interstate Commerce Commission in the case of rail carriers and to the Civil Aeronautics Board in the case of air carriers.

"(i) During the term of a collective-bargaining agreement and thereafter until the procedures of this Act shall have been exhausted including any proceedings before an Emergency Board or a special board or both, any strike including any concerted stoppage of work by employees or any concerted slowdown, sitdown, walkout, or other concerted interruption of operations by employees, or any lockout by a carrier, shall be unlawful, regardless of whether such strike or lockout relates only to matters in dispute which are not before a special board for determination.

"(j) Violation of any of the provisions of subsection (b) (5) or (g) of this section shall constitute a misdemeanor and, upon conviction thereof, any offending person, carrier, or labor organization or offending officer, agent, employee, or member of such carrier or labor organization shall be subject to the penalties prescribed in the tenth paragraph of section 2 of this Act in the case of carriers or their officers or agents for violation of the provisions of that section. The provisions of said tenth paragraph with respect to the duty of any district attorney of the United States shall apply with

equal force in the case of violation or threatened violation hereof upon application by the Mediation Board or any carrier or labor organization or its or their officers or duly authorized agents.

"(k) Any United States district court within the territorial jurisdiction of which any violation of this section shall have been committed or shall be threatened shall also have jurisdiction, at the instance of the Attorney General of the United States, or the attorney general of any State affected by such a violation or a threatened violation of this section, or of any interested carrier or aggrieved party, to grant the remedy of injunction, prohibitive or mandatory, which may be appropriate in the premises; and in any such action or proceeding the provisions of sections 6 and 20 of the Act of October 15, 1914, as amended (15 U.S.C. 17; 29 U.S.C. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115), shall be deemed not to apply.

"(l) Any person damaged by reason of any violation of the provisions of subsections (b) (5) and (g) of this section may, without regard to the amount in controversy, file an action in a United States district court for the district in which such violation occurred against the person or persons, carrier or carriers, or labor organization or organiza-

tions, who or which violated the provisions of this section, and may recover in such action the damages caused by such violation, together with costs and reasonable attorney's fees."

SEC. 2. Any dispute affecting a carrier and its employees subject to the provisions of the Railway Labor Act which shall not have been adjusted at the date of enactment of the amendment made by the first section of this Act shall be handled in accordance with the procedures of the Railway Labor Act, as so amended by the first section of this Act, regardless of the status of the dispute at the date of enactment of such amendment or the procedures previously followed. If the Mediation Board shall have previously endeavored to induce the parties to submit their controversy to arbitration pursuant to section 5 of the Railway Labor Act, the Mediation Board shall (whether or not a board under section 10 of such Act before the amendment made by the first section of this Act shall have been previously created), upon written request of any party to the dispute within fifteen days after the date of enactment of the amendment made by the first section of this Act, immediately notify the President and the President thereafter may create an emergency board pursuant to section 10(a) or a special board pursuant to section 10(b) to act upon such dispute, or take such other action as is authorized by section 10(c) or 10(d), with respect to such dispute.

[H.R. 3595, 92d Cong., 1st sess., introduced by Mr. Staggers (for himself, Mr. Eckhardt, and Mr. Macdonald of Massachusetts) on February 4, 1971;
H.R. 3985, 92d Cong., 1st sess., introduced by Mr. Murphy of New York on February 9, 1971;
H.R. 4620, 92d Cong., 1st sess., introduced by Mr. Roncalio on February 18, 1971;
H.R. 4996, 92d Cong., 1st sess., introduced by Mr. Moss (for himself and Mr. Adams) on February 25, 1971; and
H.R. 5870, 92d Cong., 1st sess., introduced by Mr. Tiernan on March 10, 1971,
are identical as follows:]

A BILL

To amend the Railway Labor Act to avoid interruptions of railroad transportation that threaten national safety and health by reason of labor disputes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10 of the Railway Labor Act (45 U.S.C. 160) is hereby amended by inserting after "SEC. 10." the subsection designation "(a)". Said section 10 is further amended by adding at the end thereof the following:

"(b) It shall be unlawful for any carrier at any time to lock out any craft or class of its employees, or any segment of any such class or craft, or in any manner to diminish its transportation service in consequence of any dispute subject

to this Act unless such carrier is caused to diminish such service by a strike of all or some portion of its employees, and then only as permitted by applicable agreements and in accordance with the notice and other provisions of said agreements.

"(c) Whenever any carrier has proposed a change in agreements affecting rates of pay, rules, or working conditions in accordance with section 6 of this Act and all procedures required under this Act have been exhausted with respect to such change, such carrier may make such change effective without agreement, except where (1) such change was proposed by the carrier in response to or in anticipation of a change or changes in such agreements proposed by a representative of employees and considered concurrently therewith and the carrier's transportation service has not been interrupted by a strike of the employees whose representative initiated the proposed change; or (2) such change is not permitted by other provisions of this Act.

"(d) Whenever a representative of employees has proposed a change in agreements affecting rates of pay, rules, or working conditions in accordance with section 6 of this Act and all procedures required under this Act have been exhausted with respect to such change, the employees represented by such representative may strike, subject to the limitations and obligations of partial operation imposed by

subsection (e) of this section, all of the carriers to whom such proposal was directed, or may selectively strike any of such carriers or carrier systems without concurrently striking other carriers to whom such proposal was also directed and who may have been jointly or concurrently involved with the struck carrier or carriers in the previous handling of the dispute under this Act. For the purposes of this subsection a strike shall be a 'selective' strike if not more than three such carriers or groups of such carriers operating in a system in any one of the eastern, the western, or the southeastern regions are concurrently struck and the aggregate revenue ton miles transported by all such carriers in any one region who are concurrently struck did not in the preceding calendar year exceed 40 per centum of the total revenue ton miles transported by all carriers in such region in such year. The eastern, the western, and the southeastern regions as used herein mean, respectively, the carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and any other carriers operating in the territories in which such carriers respectively operate.

"(e) (1) Whenever a selective strike or a strike of any combination of carriers occurs, such carrier or carriers and representative or representatives of the employees on strike shall provide service and transportation for such persons and commodities as may be directed by the Secretary of Trans-

portation pursuant to the provisions of subparagraph (2). Such service and transportation shall be provided pursuant to the rates of pay, rules, and working conditions of existing agreements.

"(2) The Secretary of Transportation after consultation with the Secretary of Defense and the Secretary of Labor shall determine the extent to which services and transportation of any struck carrier or carriers are essential to the national health or safety, including but not necessarily limited to, transportation of all defense materials, coal for the generation of electricity, and the continued operation of passenger trains including commuter service. Such determination shall be made on the basis of facts known to the Department of Transportation, shall be made in writing, shall be based on the findings of facts stated in the determination, and shall be conclusive unless shown to be arbitrary or capricious.

"(f) Nothing in this section, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect any existing limitations or qualifications on that right."

SEC. 2. This Act shall take effect immediately upon its enactment and the legality of any action taken thereafter shall be governed by the Railway Labor Act as amended hereby regardless of when such action was initiated.

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92D CONGRESS
1ST SESSION

H. R. 5347

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 1971

Mr. DINGELL introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Railway Labor Act to establish a method for settling labor disputes in transportation industries subject to that Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Railway Labor Act is amended by inserting after section 10 the following new section:

"SETTLEMENT OF DISPUTES

SEC. 10A. (a) If, on the last day of the thirty-day period referred to in the third paragraph of subsection (a) of section 10 of this Act, the parties have not reached an agreement for settling the dispute, the President shall establish a special board for the purpose of assisting the parties

in the resolution of the issues in dispute. The special board shall consist of five members. The representatives of the carriers who are parties to the dispute and the representatives of the employees who are parties to the dispute shall each name one person to serve as a member of the special board. The President shall name the Chairman and two other members. If the parties to the dispute fail to name members to the special board within five days of the date they have been requested to do so by the President, such additional members shall also be named by the President. Such board shall have the power to sit and act at any place within the United States and shall conduct such hearings, public or private, as it may deem necessary or proper to carry out this section. For the purposes of any hearing or inquiry conducted by any special board appointed under this section, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act (15 U.S.C. 49 and 50), are hereby made applicable to the powers and duties of such board.

"(b) The several departments and agencies of the Government shall cooperate with the special board in the discharge of its duties and, upon request shall furnish such information in their possession relative to the discharge of such duties, and shall detail from time to time such officials

and employees, and perform such services as may be appropriate. The National Mediation Board is authorized and directed to compensate the members of such special board at a rate not in excess of $100 for each day, together with necessary travel and subsistence expenses, and to provide such services and facilities as may be necessary and appropriate in effectuating the purposes of this section. The National Mediation Board is further authorized and directed to reimburse such other agencies for assistance in carrying out the purposes of this section as may be appropriate.

"(c) Within such time as the special board may determine, but not to exceed fifteen days after its establishment, the carrier parties to any such dispute shall be required to submit to such board a last offer of settlement of the issues in dispute. Within twenty days thereafter the National Mediation Board, with such assistance from other agencies as may be necessary, shall take a secret ballot of the employees of each carrier involved in the dispute on the question of whether they wish to accept the offer. The result of such ballot shall be certified to the special board. If the majority of the employees vote to accept such proposal, such determination shall be binding on the parties. If the carrier's offer is rejected, the representatives of such employees shall, within five days after certification of rejection, submit to the carriers, with copies to the special board, a counteroffer,

which shall within five days be accepted or rejected. The special board shall be authorized to make public any or all of the proceedings and issue such reports to the President, the Congress, and the public as it may deem appropriate.

"(d) At the expiration of sixty days, unless the dispute has been settled by that time, the President shall direct the special board to report to him, within such time as he shall determine, but not to exceed ten days, the status of the dispute. Such report shall include an evaluation of the issues in dispute, the positions of the parties and of those proposals for settlement which appear most reasonable and appropriate for the protection of the public interest. A copy shall be made available to the parties and shall be made public. Upon receipt of such report the President shall be authorized to take such additional action as set forth in subsection (e) of this section.

"(e) (1) If the parties shall not have reached agreement within ten days of the receipt of such report by the President, he is authorized to direct any carrier, or carriers, subject to the provisions of this section to transport any goods, material, equipment, or personnel as he may deem necessary to protect the health, welfare, safety, or public interest of the Nation. Any carrier, or carriers, directed to perform such services shall be advised that such order is issued pursuant to this section, and the President shall, by

rules or regulations issued thereunder, provide such procedures as may be necessary and appropriate to carry out the purposes of this section.

"(2) The President is authorized to establish fair and equitable rates for the transportation of such goods, material, equipment, or personnel ordered to be transported pursuant to this subsection and to modify the wages, hours, and working conditions in effect during the performance of any such service. Any such modification shall not be inconsistent with the proposals made by one or both of the parties or the evaluations contained in the report of the special board pursuant to subsection (d) of this section. Whenever any such carrier, or carriers, is engaged in such transportation pursuant to an order issued under this subsection, the wages, hours, and working conditions in effect at the time the dispute arose shall be fully applicable without change, except by agreement between the parties, or as may be modified pursuant to any order of the President, or such agency of the Government as may be designated by the President to perform such functions.

"(3) Fair and just compensation shall be paid by the United States for the transportation of goods, material, equipment, or personnel, to the extent such service is for the sole benefit of the United States.

"(4) The President may delegate the authority under

this subsection to any agency of the Government which he deems appropriate, and the several departments and agencies of the Government are authorized and directed, to the extent consistent with law, to exercise their powers, duties, and functions in such manner as will assist in carrying out the objectives of this section. This subsection shall be supplemental to any existing authority, and nothing herein shall be deemed to be restrictive of any existing powers, duties, and functions of any such department or agency of the Federal Government.

"(f) (1) The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this section. Any suit, action, or proceeding under this section against an employer, or a labor organization, or other persons subject thereto involving two or more defendants residing in different districts may be brought in the judicial district whereof any such defendant is an inhabitant: and all process in such cases may be served in the district in which any of them are inhabitants or wherever they may transact business or be found. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be summoned whether they reside in the district in which the

court is held or not, and subpenas to that end may be served in any district by the marshal thereof.

"(2) In any case brought under this section, the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (47 Stat. 70; 29 U.S.C. 101–115) shall not be applicable.

"(3) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals as provided in sections 1291 and 1292 of title 28, United States Code, and by the Supreme Court upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

"(g) Any fact, criteria, or information utilized by the President or designated agency in the implementation of this section shall be available in its entirety to any committee or subcommittee of either House of the Congress having legislative or audit responsibility in the field of transportation."

92D CONGRESS
1ST SESSION

H. R. 8385

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 1971

Mr. HARVEY introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Railway Labor Act to provide more effective means for protecting the public interest in national emergency disputes involving the railroad and airline transportation industries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10 of the Railway Labor Act (45 U.S.C. 160) is amended to read as follows:

"EMERGENCY PROCEDURES

"SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall

notify the President, who may thereupon, in his discretion, invoke the procedures provided in title III of this Act by notification to the parties concerned and to the National Mediation Board. Upon such notification by the President, and for sixty days thereafter, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.".

SEC. 2. The Railway Labor Act is amended by adding at the end thereof the following new title:

"TITLE III

"SEC. 301. Upon notification by the President of the invocation of the procedures of this title as provided in section 10 of this Act, the National Mediation Board shall, within thirty days, recommend to the President specific actions under this title which it deems most appropriate to the settlement of the dispute and the protection of the public interest. Such recommendations shall not be made public, nor shall they be disclosed in whole or in part to the parties concerned in the dispute. During subsequent proceedings under this title, the National Mediation Board shall, at any time it deems desirable or at the request of the President, submit additional procedural recommendations to the President for his consideration. Such additional recommendations shall not be made public nor disclosed in any way to the parties con-

cerned in the dispute. No recommendations made under this section shall be binding on the President.

"SEC. 302. During the sixty-day period provided in section 10 of title I of this Act, the President may, in his discretion, create a board to investigate and report respecting such dispute. The report of the board shall include substantive recommendations for agreements between the parties to the dispute. The President shall transmit such recommendations to the parties, and may make such recommendations public if he so desires. Such board shall be composed of such number of persons as the President may deem desirable. No member of the board shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within the sixty-day period referred to in section 10 of title I of this Act. There is authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

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"SEC. 303. If, at the end of the sixty-day period referred to in section 10 of title I of this Act, no agreement has been reached by the parties to the dispute, and if the President finds that the dispute threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, he shall proceed under the provisions of section 305, 306, or 307 of this title. Until final agreement to the dispute is reached, the President shall continue to proceed under these sections in such sequences as he may deem appropriate, except that he shall proceed initially under the provisions of section 306 unless he finds that the national health and safety would thereby be immediately imperiled.

"SEC. 304. The provisions of sections 305, 306, and 307 of this title shall apply immediately upon the President's announcement in each instance. However, if the provisions of either section 305 or 307 are selected by the President while any selective strikes are in progress under section 306, those strikes shall be terminated within two days after such selection, and the provisions of section 305 or 307 will apply immediately following such two-day period.

"ADDITIONAL COOLING-OFF PERIOD

"SEC. 305. If the President elects to proceed under the provisions of this section, he shall direct the parties to the controversy to refrain for a period of not more than thirty

days from making any changes, except by agreement, in the terms and conditions of employment which were in effect at the time of the President's notification invoking the provisions of title III of this Act. During such period the parties shall continue to bargain collectively, and the National Mediation Board shall continue to mediate the dispute.

"SELECTIVE STRIKES

"SEC. 306. (a) If the President elects to proceed under the provisions of this section, the employees affected by the dispute may, after notice of not less than 10 days to the carriers concerned, selectively strike, subject to the limitations and obligations of partial operation imposed by subsection (b) of this section, any of the carriers or carrier systems to whom such proposal was directed without concurrently striking other carriers to whom such proposal was also directed and who may have been jointly or concurrently involved with the struck carrier or carriers in the previous handling of the dispute under this Act. For the purposes of this section a strike shall be a 'selective' strike if not more than two such carriers or groups of such carriers operating in a system in any one of the eastern, the western, or the southeastern regions are concurrently struck and the aggregate revenue ton-miles transported by all such carriers in any one region who are concurrently struck did not in the preceding calendar

year exceed 20 per centum of the total revenue ton-miles transported by all carriers in such region in such year. If only one carrier is struck in any one region, the revenue ton-mile limitation shall not apply in that region. The eastern, the western, and the southeastern regions as used in this subsection mean, respectively, the carriers represented by the Eastern, Western, and the Southeastern Carriers' Conference Committees and any other carriers operating in the territories in which such carriers respectively operate.

"(b) Whenever a selective strike or a strike of any combination of carriers occurs, such carrier or carriers and representative or representatives of the employees on strike shall provide service and transportation for such persons and commodities as may be directed by the Secretary of Transportation pursuant to the provisions of this subsection. Such service and transportation shall be provided pursuant to the rates of pay, rules, and working conditions of existing agreements. The Secretary of Transportation, after consultation with the Secretary of Defense and the Secretary of Labor, shall determine the extent to which services and transportation of any struck carrier or carriers are essential to the national health or safety, including, but not necessarily limited to, transportation of all defense materials, coal for the generation of electricity, and the continued operation of passenger trains, including commuter service. Such deter-

mination shall be made on the basis of facts known to the Department of Transportation, shall be made in writing, shall be based on the findings of facts stated in the determination, and shall be conclusive unless shown to be arbitrary or capricious.

"(c) Whenever the President has proceeded under the provisions of this section, it shall be unlawful for any carrier to lock out any craft or class of its employees, or any segment of any such class or craft, or in any manner to diminish its transportation service in consequence of any dispute subject to this section unless such carrier is caused to diminish such service by a strike of all or some portion of its employees, and then only as permitted by applicable agreements and in accordance with the notice and other provisions of such agreements.

"(d) In any dispute subject to the provisions of this section, any agreements affecting rates of pay, rules, or working conditions between the employees or their representatives and any carriers which have been struck under this section shall be immediately offered jointly, without change, to all carriers who have been jointly or concurrently involved in the previous handling of the dispute under this Act. If all such carriers do not, within ten days after any such offer, jointly accept such agreements without change, the agreements shall be then offered, individually, to each such

carrier. If any such carrier does not, within ten days after having received such individual offer, individually accept such agreements without change, the employees affected by the dispute may selectively strike such carrier, subject to the limitations specified in subsection (a) of this section.

"(e) In the event that separate disputes within a single industry are simultaneously subject to this section, the limitations provided in subsection (a) and subsection (b) of this section shall apply jointly to all selective strikes within that industry.

"FINAL OFFER SELECTION

"SEC. 307. (a) If the President elects to proceed under the provisions of this section, he shall direct each party to submit a sealed final offer to the Secretary of Labor within five days. Each party may at the same time submit one alternative sealed final offer. If any party refuses to submit a final offer, the last offer made by such party during previous bargaining shall be deemed that party's final offer, and shall be prepared, sealed, and submitted to the Secretary by the National Mediation Board. Any offer submitted by a party pursuant to this section must resolve all the issues involved in the dispute.

"(b) The parties may, within ten days after the President has proceeded under the provisions of this section, select a three-member panel to act as the final offer selector.

If the parties are unable to agree on the composition of the panel, the President shall select the panel.

"(c) The provision of section 302 of title III of this Act shall apply to the panel.

"(d) The panel shall, immediately upon its selection, conduct an informal hearing in which it may direct either party or the Government to provide any relevant information regarding the dispute or the factors referred to in subsection (e) of this section.

"(e) Thirty days after the selection of the panel, if no complete agreement has been reached by the parties, the Secretary shall transmit to the panel the sealed final offers, and the panel shall select within five days, the most reasonable, in its judgment, of those final offers. The party which submitted the final offer selected by the panel shall not be identified by the panel, and the remaining final offers shall not be disclosed in any way, and shall be returned to the parties. The panel may take into account the following factors:

"(1) past collective bargaining contracts between the parties including the bargaining that led up to such contracts;

"(2) comparison of wages, hours, and conditions of employment of the employees involved, with wages, hours, and conditions of employment of other employees

doing comparable work, giving consideration to factors peculiar to the industry involved;

"(3) comparison of wages, hours, and conditions of employment as reflected in industries in general, and in the same or similar industry;

"(4) security and tenure of employment with due regard for the effect of technological changes on manning practices or on the utilization of particular occupations; and

"(5) the public interest, and any other factors normally considered in the determination of wages, hours, and conditions of employment.

"(f) The panel shall not compromise nor alter the final offer that it selects. Selection of a final offer shall be based on the content of the final offer and no consideration shall be given to, nor shall any evidence be received concerning, the collective bargaining in the particular dispute, including offers of settlement not contained in the final offers.

"(g) During the period commencing when the President has proceeded under the provisions of this section, the parties are directed to undertake collective bargaining in good faith under the auspices of the National Mediation Board. If, before the panel has announced its selection of a final offer, any complete agreement is reached concerning the issues under dispute, notwithstanding the final offers

submitted in accordance with this section, then the provisions of this section no longer apply, the final offer will be returned to the parties without being disclosed in any way, and the agreements reached will be considered final and binding.

"(h) From the time the President proceeds under the provisions of this section, until the panel selects the final offer it judges most reasonable or until agreement is reached between the parties under subsection (g), no changes shall be made in the terms and conditions of employment which were in effect at the time of the President's notification invoking the provisions of title III of this Act.

[H.R. 9088, 92d Cong., 1st sess., introduced by Mr. Harvey (for himself, Mr. Anderson of Illinois, Mr. Broyhill of North Carolina, Mr. Cederberg, Mr. Chamberlain, Mr. Conable, Mr. Dellenback, Mr. Derwinski, Mr. Devine, Mr. Erlenborn, Mr. Freylinghuysen, Mr. Frenzel, Mr. Frey, Mr. Gettys, Mr. Halpern, Mr. Harrington, Mr. Hosmer, Mr. Hutchinson, Mr. Keating, Mr. Keith, Mr. Lloyd, Mr. McClory, Mr. McCloskey, Mr. McDonald of Michigan, and Mr. Morse) on June 14, 1971;
H.R. 9089, 92d Cong., 1st sess., introduced by Mr. Harvey (for himself, Mr. Mosher, Mr. Rees, Mr. Robison of New York, Mr. Roybal, Mr. Schwengel, Mr. Shriver, Mr. Stafford, Mr. J. William Stanton, Mr. Vander Jagt, Mr. Whitehurst, Mr. Bob Wilson, and Mr. Zablocki) on June 14, 1971;
H.R. 9571, 92d Cong., 1st sess., introduced by Mr. Harvey (for himself, Mr. Brown of Michigan, Mr. Coughlin, Mr. Evins of Tennessee, Mr. Grover, Mr. Gude, Mr. Latta, Mr. Lent, Mr. McCollister, Mr. Robinson of Virginia, Mr. Schneebeli, Mr. Sebelius, Mr. Steiger of Wisconsin, Mr. Thone, Mr. Veysey, and Mr Williams) on July 1, 1971;
H.R. 9820, 92d Cong., 1st sess., introduced by Mr. Harvey (for himself, Mr. Burke of Florida, Mr. Collier, and Mr. McKevitt) on July 15, 1971;
H.R. 10433, 92d Cong., 1st sess., introduced by Mr. Harvey (for himself, Mr. Broomfield, Mr. Burleson of Texas, Mr. Byrnes of Wisconsin, Mr. Duncan, Mr. Scott, and Mr. Edwards of Alabama) on August 5, 1971;
H.R. 10491, 92d Cong., 1st sess., introduced by Mr. Hastings on August 6, 1971; and
H.R. 10781, 92d Cong., 1st sess., introduced by Mr. Harvey (for himself, Mr. Don H. Clausen, Mr. Cleveland, Mr. Fisher, Mr. Forsythe, Mr. Hamilton, Mr. Hastings, Mr. Hunt, Mr. Nelsen, and Mr. Ware) on September 21, 1971
are identical as follows:]

A BILL

To amend the Railway Labor Act to provide more effective means for protecting the public interest in national emergency disputes involving the railroad and airline transportation industries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10 of the Railway Labor Act (45 U.S.C. 160) is amended to read as follows:

"EMERGENCY PROCEDURES

"SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board,

threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, invoke the procedures provided in title III of this Act by notification to the parties concerned and to the National Mediation Board. Upon such notification by the President, and for sixty days thereafter, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.".

SEC. 2. The Railway Labor Act is amended by adding at the end thereof the following new title:

"TITLE III

"SEC. 301. Upon notification by the President of the invocation of the procedures of this title as provided in section 10 of this Act, the National Mediation Board shall, within thirty days, recommend to the President specific actions under this title which it deems most appropriate to the settlement of the dispute and the protection of the public interest. Such recommendations shall not be made public, nor shall they be disclosed in whole or in part to the parties concerned in the dispute. During subsequent proceedings under this title, the National Mediation Board shall, at any time it deems desirable or at the request of the President, submit additional procedural recommendations to the President for his consid-

eration. Such additional recommendations shall not be made public nor disclosed in any way to the parties concerned in the dispute. No recommendations made under this section shall be binding on the President.

"SEC. 302. During the sixty-day period provided in section 10 of title I of this Act, the President may, in his discretion, create a board to investigate and report respecting such dispute. The report of the board shall include substantive recommendations for agreements between the parties to the dispute. The President shall transmit such recommendations to the parties, and may make such recommendations public if he so desires. Such board shall be composed of such number of persons as the President may deem desirable. No member of the board shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within the sixty-day period referred to in section 10 of title I of this Act. There is authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of

the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"SEC. 303. If, at the end of the sixty-day period referred to in section 10 of title I of this Act, no agreement has been reached by the parties to the dispute, and if the President finds that the dispute threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, he shall proceed under the provisions of sections 305, 306, or 307 of this title. Until final agreement to the dispute is reached, the President shall continue to proceed under these sections in such sequences as he may deem appropriate, except that he shall proceed initially under the provisions of section 306 unless he finds that the national health and safety would thereby be immediately imperiled.

"SEC. 304. The provisions of sections 305, 306, and 307 of this title shall apply immediately upon the President's announcement in each instance. If the provisions of either section 305 or 307 are selected by the President while any selective strikes are in progress under section 306, those strikes shall be terminated, and the provisions of section 305 or 307 will apply, immediately.

"ADDITIONAL COOLING-OFF PERIOD

"SEC. 305. If the President elects to proceed under the provisions of this section, he shall direct the parties to

the controversy to refrain for a period of not more than thirty days from making any changes, except by agreement, in the terms and conditions of employment which were in effect at the time of the President's notification invoking the provisions of title III of this Act. During such period the parties shall continue to bargain collectively, and the National Mediation Board shall continue to mediate the dispute.

"SELECTIVE STRIKES

"SEC. 306. (a) If the President elects to proceed under the provisions of this section, the employees affected by the dispute may, after notice of not less than ten days to the carriers concerned, selectively strike, subject to the limitations and obligations of partial operation imposed by subsection (b) of this section, any of the carriers or carrier systems to whom such proposal was directed without concurrently striking other carriers to whom such proposal was also directed and who may have been jointly or concurrently involved with the struck carrier or carriers in the previous handling of the dispute under this Act. For the purposes of this section a strike in the railroad industry shall be a 'selective' strike if not more than two such carriers or groups of such carriers operating in a system in any one of the eastern, the western, or the southeastern regions are concurrently struck and the aggregate revenue ton-miles trans-

ported by all such carriers in any one region who are concurrently struck did not in the preceding calendar year exceed 20 per centum of the total revenue ton-miles transported by all carriers in such region in such year. If only one railroad carrier is struck in any one region, the revenue ton-mile limitation shall not apply in that region. The eastern, the western, and the southeastern regions as used in this subsection mean, respectively, the carriers represented by the Eastern, Western, and the Southeastern Carriers' Conference Committees and any other carriers operating in the territories in which such carriers respectively operate.

"(b) Whenever a selective strike or a strike of any combination of carriers occurs, such carrier or carriers and representative or representatives of the employees on strike shall provide service and transportation for such persons and commodities as may be directed by the President pursuant to the provisions of this subsection. In order to proceed under this subsection, the President must find that such services or transportation cannot in any way be provided by alternate rail, truck, water or air transportation, and must find that the termination of such services or transportation would immediately imperil the national health or safety. The Secretary of Transportation, the Secretary of Defense, the Secretary of Commerce, the Office of Emergency Preparedness, the Joint Board on Fuel Supply and Rail Transport and other

interested governmental agencies shall adivse the President as to the necessity for such services and transportation, which shall include, but not necessarily be limited to, transportation of defense materials, coal for the generation of power, operation of passenger trains, including commuter service, and operation of key interchange points or jointly owned facilities of a struck carrier.

"(c) Whenever the President has proceeded under the provisions of this section, it shall be unlawful for any carrier to lock out any craft or class of its employees, or any segment of any such class or craft, or in any manner to diminish its transportation service in consequence of any dispute subject to this section unless such carrier is caused to diminish such service by a strike of all or some portion of its employees, and then only as permitted by applicable agreements and in accordance with the notice and other provisions of such agreements.

"(d) In any dispute subject to the provisions of this section, any agreements affecting rates of pay, rules, or working conditions between the employees or their representatives and any carriers which have been struck under this section shall be immediately offered jointly, without change, to all carriers who have been jointly or concurrently involved in the previous handling of the dispute under this Act. If all such carriers do not, within 10 days after any

such offer, jointly accept such agreements without change, the agreements shall be then offered, individually, to each such carrier. If any such carrier does not, within ten days after having received such individual offer, individually accept such agreements without change, the employees affected by the dispute may selectively strike such carrier, subject to the limitations specified in subsection (a) of this section.

"(c) In the event that separate disputes within a single industry are simultaneously subject to this section, the limitations provided in subsection (a) and subsection (b) of this section shall apply jointly to all selective strikes within that industry.

"FINAL OFFER SELECTION

"SEC. 307. (a) If the President elects to proceed under the provisions of this section, he shall direct each party to submit a sealed final offer to the Secretary of Labor within five days. Each party may at the same time submit one alternative sealed final offer. If any party refuses to submit a final offer, the last offer made by such party during previous bargaining shall be deemed that party's final offer, and shall be prepared, sealed and submitted to the Secretary by the National Mediation Board. Any offer submitted by a party pursuant to this section must resolve all the issues involved, and shall be restricted to matters arising

from the notices filed under section 6 of the Act concerning the particular dispute.

"(b) The parties may, within ten days after the President has proceeded under the provisions of this section, select a three-member panel to act as the final offer selector. If the parties are unable to agree on the composition of the panel, the President shall select the panel.

"(c) The provisions of section 302 of title III of this Act shall apply to the panel.

"(d) The panel shall immediately upon its selection, conduct an informal hearing in which it may direct either party or the Government to provide any relevant information regarding the dispute or the factors referred to in subsection (e) of this section.

"(e) Thirty days after the selection of the panel, if no complete agreement has been reached by the parties, the Secretary shall transmit to the panel the sealed final offers, and the panel shall select within five days, the most reasonable, in its judgment, of those final offers. The party which submitted the final offer selected by the panel shall not be identified by the panel, and the remaining final offers shall not be disclosed in any way, and shall be returned to the parties. The panel may take into account the following factors:

"(1) past collective bargaining contracts between the parties including the bargaining that led up to such contracts;

"(2) comparison wages, hours, and conditions of employment of the employees involved, with wages, hours, and conditions of employment of other employees doing comparable work, giving consideration to factors peculiar to the industry involved;

"(3) comparison of wages, hours, and conditions of employment as reflected in industries in general, and in the same or similar industry;

"(4) security and tenure of employment with due regard for the effect of technological changes on manning practices or on the utilization of particular occupations; and

"(5) the public interest, and any other factors normally considered in the determination of wages, hours, and conditions of employment.

"(f) The panel shall not compromise nor alter the final offer that it selects. Selection of a final offer shall be based on the content of the final offer and no consideration shall be given to, nor shall any evidence be received concerning, the collective bargaining in the particular dispute, including offers of settlement not contained in the final offers, except that the panel shall receive in evidence and give considera-

tion to the report of any board created under section 302 of this Act with respect to the particular dispute.

"(g) During the period commencing when the President has proceeded under the provisions of this section, the parties are directed to undertake collective bargaining in good faith under the auspices of the National Mediation Board. If, before the panel has announced its selection of a final offer, any complete agreement is reached concerning the issues under dispute, notwithstanding the final offers submitted in accordance with this section, then the provisions of this section no longer apply, the final offers will be returned to the parties without being disclosed in any way, and the agreements reached will be considered final and binding.

"(h) From the time the President proceeds under the provisions of this section, until the panel selects the final offer it judges most reasonable or until agreement is reached between the parties under subsection (g), no changes shall be made in the terms and conditions of employment which were in effect at the time of the President's notification invoking the provisions of title III of this Act.

"(i) The final offer selected by the panel shall be deemed to represent the contract between the parties, and shall be conclusive unless found arbitrary and capricious.

92D CONGRESS
1ST SESSION

H. R. 9989

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 1971

Mr. JARMAN (by request) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Railway Labor Act and the Railroad Unemployment Insurance Act so as to provide more effective means for protecting the public interest in labor disputes involving the transportation industry and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AMENDMENTS TO THE RAILWAY LABOR ACT

SEC. 101. (a) Section 1, Second, of title I of the Railway Labor Act is repealed and Section 1, Third and Fourth are redesignated as Section 1, Second and Third, respectively.

SEC. 101. (b) Section 1, Fifth, of title I of the Railway Labor Act is redesignated as section 1, Fourth, and is amended by deleting the words, "or subordinate official" and "*Provided, however,* That," substituting a period for the colon after the words "existing orders"; and inserting "(1)" after the word "include" and the words, "employed as a supervisor or (2) any individual" before the words, "while such."

SEC. 101. (c) Section 1, Sixth, of title I of the Railway Labor Act is redesignated as Section 1, Fifth, and is amended by eliminating the period at the end thereof and adding the words, "with full authority to make agreements without ratification by those whom they represent."

SEC. 101. (d) Section 1, Seventh, of title I of the Railway Labor Act is redesignated as Section 1, Sixth, and is amended by using the words "United States District Court for" in lieu of the words "Supreme Court of" and deleting the word "circuit."

SEC. 101. (e) Section 1, of title I of the Railway Labor Act is further amended by adding Section 1, Seventh, to read as follows:

"Seventh. The term 'supervisor' means any individual having authority, in the interest of a carrier or carriers, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees,

or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

SEC. 102. (a) Section 2, Second, of title I of the Railway Labor Act is amended by deleting at the end thereof the words, "respectively, by the carrier or carriers and by the employees thereof interested in the dispute" and adding in lieu thereof the words, "and to make agreements settling matters in dispute. All such representatives shall be vested with full authority to effect final settlement of disputes and all agreements entered into by such representatives shall be binding whether or not ratified or approved prior to or subsequent to execution."

SEC. 102. (b) Section 2, Third, of title I of the Railway Labor Act is amended by adding as the ending of the first sentence the words, "except that any involved carrier will, upon request to the Mediation Board, be made a party to any representation dispute among its employees, and shall be permitted to participate as such in all proceedings, including but not limited to determination of the appropriate class or craft for representation purposes."

SEC. 102. (c) Section 2, Fourth, of title I of the Railway Labor Act is amended by adding to the end of the

second sentence thereof the words, "or to determine that no representative shall be chosen."; deleting the words "*Provided,* That," and the preceding colon; inserting in lieu of the colon, the words, "except as provided in Section 2, Eleventh of this Act."; and capitalizing the word "Nothing" which would follow thereafter.

SEC. 102. (d) Section 2, Ninth, of title I of the Railway Labor Act is amended by inserting "(a)" after the word "Ninth."; inserting after the first word "employees" the words, "or between a carrier and its employees"; substituting the word "any" for the word "either" preceding the word "party" and adding after the word "party," the words, "including the carrier on which the dispute arises,"; substituting the word "the" for the word "both" preceding the word "parties"; adding the words, "or that no representative has been selected," preceding the words "and certify"; adding the words ", if any," following the words, "so certified"; redesignating the last sentence as paragraph "(d)" to follow new paragraph to be designated "(c)"; adding to the sentence following the words "records of the " the words "labor organization and" and substituting the word "sections" for the word "paragraph" as the last word of new paragraph "(d)"; adding as the last sentence of paragraph "(a)" the words, "In each election conducted under this paragraph, employees shall be entitled to vote for representation by any

labor organization or labor representative, or for no representation."; and adding after paragraph "(a)" new paragraph "(b)" and "(c)" to read as follows:

"(b) If any dispute shall arise between a labor organization representing a craft or class of employees on a carrier and one or more other labor organizations representing a craft or class of employees on the carrier as to whether certain employees or prospective employees of the carrier come within the one craft or class or the other for purposes of this Act, it shall be the duty of the Mediation Board or of a committee of three neutral persons appointed by the Board to act in its behalf, upon request of any labor organization party to the dispute or of the carrier involved, to investigate such dispute and certify to the labor organizations and to the carrier involved, in writing within thirty days after the receipt by the Board of the invocation of its services, the craft or class within which the employees or prospective employees are included for purposes of representation under this Act. Upon receipt of a certification under this paragraph of the craft or class within which the employees or prospective employees are included, the carrier shall treat with the representative of the craft or class so certified as the representative of such employees or prospective employees for the purposes of this Act.

"(c) If a dispute arises that may be resolved under

either paragraph (a) or paragraph (b) of this section, the carrier involved need not treat with anyone as the representative of the employees or prospective employees involved in the dispute prior to receipt of the certification provided for in paragraph (a) or paragraph (b), whichever is applicable."

SEC. 102. (e) Section 2, Eleventh (c), of title I of the Railway Labor Act is amended by deleting from the first sentence thereof the words, "that is, an employee engaged in any of the services or capacities covered in Section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board" and by deleting the words "national in scope" wherever they appear in Section 2, Eleventh (c).

SEC. 103. Section 3 of title I of the Railway Labor Act is repealed in its entirety and substituted therefor is a new section 3 to read as follows:

"SEC. 3. (a) Any dispute or disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions shall be handled in the usual manner up to and including the highest officer of the carrier designated to handle such disputes; but, if no adjustment is reached in this manner, the dispute or disputes may be referred by

petition of the parties or by a party to a special board of adjustment established as hereinafter provided.

"(b) A special board of adjustment to resolve a dispute or disputes shall be established by a written request made upon an individual carrier by the representative of any craft or class of employees of such carrier, or by the carrier upon any such representative. The carrier or the representative upon whom such request is made shall join in any agreement establishing such board within thirty days from the date such request is made. The dispute or disputes which may be considered by such board shall be specified in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or representative fails to agree upon the establishment of such a board as provided herein, or to designate a member of the board, either the carrier or the representative may request the Mediation Board to designate a member of the board on behalf of the carrier or representative. Upon receipt of such request, the Mediation Board shall promptly designate and select an individual associated in interest with the carrier or the representative he is to represent. The members of the board so designated shall determine all matters not agreed upon by the carrier and the representative of the employees with respect to procedure and jurisdiction of the

special board of adjustment, including the question as to whether an additional party or parties may have an interest in any of the unadjusted disputes to be considered by such board and the manner in which the expenses of the board and compensation of any neutral appointed will be shared by the parties. If they are unable to agree, such matters shall be determined by a neutral member of the special board of adjustment selected or appointed and compensated in the same manner hereinafter provided for the appointment of a neutral member when the board is unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters except as provided in paragraph (f).

"(e) If the members of the special board of adjustment are unable to agree upon an award disposing of a dispute or disputes they shall forthwith agree upon and select a neutral person, to be known as 'referee,' to be a member of the board for the consideration and disposition of such dispute or disputes. In the event the members of such board are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request, the Mediation Board shall promptly make such appointment. The Mediation Board shall be bound by the same provisions

in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators.

"(d) The special board of adjustment shall hold hearings on each dispute submitted to it. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The board shall have authority to require the production of such additional evidence, either oral or written as it may desire from the parties.

"(e) If the special board of adjustment determines that an additional party or parties may have an interest in any unadjusted dispute submitted to it, such party shall be given due and reasonable notice of the time and place such dispute is to be heard by the board and an opportunity shall be afforded said third party to appear before the board and be heard and present evidence consistent with the rules and procedures adopted by the board, including the right to be present at any executive session of the board convened for the purpose of considering and adopting any proposed award. In a dispute where notice has been given to additional parties, the neutral member of the special board of adjustment

shall be one of the two members of the board rendering an award.

"(f) The awards of the special board of adjustment shall be in writing. No award shall be rendered in a dispute involving additional parties unless it is resolved as to all parties involved. A copy of the awards shall be furnished to all parties including any additional parties and the awards shall be final and binding upon all parties to the dispute including such additional party or parties. In case a dispute arises involving an interpretation of the award, the special board of adjustment upon request of any party shall interpret the award in the light of the dispute. If in a judicial proceeding, an award is held not binding on one or more of the parties to the dispute, including additional parties, the award shall be deemed not binding on any of the parties.

"(g) Except as provided in paragraph (e) of this section, a majority vote of all members of the board shall be competent to make an award with respect to any unadjusted dispute submitted to it.

"(h) In case of an award in favor of the petitioner, the board shall make an order, to make the award effective and, if the award includes a requirement for the payment of money, to pay the said sum on or before a day named. In the event the board determines that an award favorable to the petitioner should not be made, the board shall make an order stating such determination.

"(i) If a party does not comply with an order of a board within the time limit specified by the board in its order, the petitioner, or any person for whose benefit such order was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of a carrier, or through which the carrier operates, a petition setting forth briefly the case for which he claims relief, and the order of the board. Such suit shall proceed in all respects as other civil suits, except that on the trial of such suit, the findings of the board shall be conclusive on the parties. The district courts are empowered to make such order and enter such judgment as may be appropriate to enforce or set aside in whole or in part the order of the board or remand the proceedings to the board for such further action as it may direct; however, such order may not be set aside except for failure of the board to comply with the requirements of this Act, for failure of the order to conform, or confine itself to matters within the scope of its jurisdiction, or for fraud, or corruption by the neutral member of the board.

"(j) If any employee or group of employees, or any carrier, is aggrieved by any of the terms of an award, or by the failure of the special board of adjustment to include certain terms in such an award, such employee or group of employees or carrier may file in any United States district

court in which a petition under paragraph (i) of this section could be filed, a petition for review of the board's order. The petitioner shall file in the court the record of the board proceedings on which it bases its action. The court shall have jurisdiction to affirm the order of the board or to set it aside, in whole or in part, or it may remand the proceedings to the board for further action as it may direct. On such review, the findings of the board shall be conclusive on the parties, except that the order of the board may be set aside, in whole or in part or remanded to the board for failure of the board to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the board's jurisdiction, or for fraud or corruption by the neutral member of the board making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28, United States Code.

"(k) All actions under (i) and (j) of this section shall be commenced within two years from the date of the board's award.

"(l) Each member of any special board of adjustment representing a carrier or its employees shall be compensated by the party he represents. All expenses incurred in connection with a board, including the compensation and incurred expenses of any neutral person, shall be paid for by

the parties except that any additional party or parties shall not be required to share in such expenses.

"(m) The National Railroad Adjustment Board shall be dissolved within two years from the date of this Act or after it has processed to completion all of the disputes before it, whichever occurs first. Any party to a dispute now pending before the National Railroad Adjustment Board may, upon written notice to the other that he wishes to submit it to a special board of adjustment established as provided in this section, withdraw such a dispute from the National Railroad Adjustment Board. No dispute shall be referred to the National Railroad Adjustment Board commencing sixty days after the effective date of this Act.

"(n) Nothing in this section shall be construed to prevent any carrier, system, or group of carriers and any of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of special boards of adjustment on a system, group or regional basis for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that a party to such a special board of adjustment is dissatisfied with such arrangement, it may, upon ninety days' notice to the other party, terminate such arrangement and have its unadjusted disputes disposed of as otherwise provided in this section."

SEC. 104. (a) Section 4, First, of title I of the Railway Labor Act is amended by deleting the first and third sentence in the first paragraph; substituting the word "five" for the word "three" in the fourth sentence of the first paragraph; and deleting the second paragraph.

SEC. 104. (b) Section 4, Third, of title I of the Railway Labor Act is amended by deleting from the words in parentheses under "(3)" the words "Adjustment Board, Regional Adjustment Boards established under paragraph (x) of section 3, and the boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively," and deleting thereafter in the same sentence the words "in the Adjustment Board and in the boards of arbitration,".

SEC. 104. (c) Section 4, Fifth, of title I of the Railway Labor Act is repealed in its entirety.

SEC. 105. Section 5, First (b), of title I of the Railway Labor Act is amended by deleting from the first sentence the words "referable to the National Railroad Adjustment Board" and substituting in lieu thereof the words "subject to resolution pursuant to section 3 of this Act"; adding the word "an" preceding the last word of the first sentence of the third paragraph, and adding the words "which will settle the controversy or provide a means of reaching settlement" at the end of the sentence; and deleting

the remainder of Section 5, First (b), following the word "once" in the second sentence of the third paragraph, substituting in lieu thereof the words "notify both parties in writing that its mediatory efforts have failed and shall notify the Secretaries of Labor, Commerce, and Transportation as required by section 10 of this Act."

SEC. 106. (a) Section 7, Third (e), of title I of the Railway Labor Act is amended by deleting the second sentence and substituting in lieu thereof the sentence, "All other expenses incurred in connection with a board of arbitration, including the compensation and expenses of any neutral person or arbitrator, shall be paid for by the parties."

SEC. 106. (b) Section 7, Third (g), of title I of the Railway Labor Act is deleted and Section 7, Third (h) is redesignated Section 7, Third (g).

SEC. 107. Section 5, Third (b), Section 8(d), and Section 9, Fifth and Sixth, of title I of the Railway Labor Act, are amended by deleting the word "circuit" from the phrase "circuit court of appeals."

SEC. 108. Section 10, of title I of the Railway Labor Act is repealed in its entirety and substituted therefor is a new section 10 to read as follows:

"Section 10, First. If a dispute between a carrier or carriers and its or their employees is not adjusted under the foregoing provisions of this Act, the Board shall at once

notify the Secretaries of Labor, Commerce, and Transportation who shall, within ten days, jointly appoint a Transportation Labor Panel to investigate such dispute. The Panel shall be composed of such number of persons as the Secretaries may deem desirable, one of whom shall be designated as chairman. Such Panel shall be created separately in each instance.

"Second. The Panel shall not attempt to adjust the dispute through mediation or conciliation and shall not make any recommendations regarding the terms and conditions for settlement of the dispute, except as may otherwise be provided in this Act.

"Third. Following the Board's notification to the Secretaries of Labor, Commerce, and Transportation and for thirty days after exhaustion of the last procedure possible under this section, including the procedure under Sixth A, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

"Fourth. Within fifteen days of the date of appointment of the Transportation Labor Panel, it shall, if the dispute has not been resolved, make a specific recommendation to the Secretaries of Labor, Commerce, and Transportation as to which of the procedures specified in paragraph Sixth of this section it believes to be most appropriate for the fur-

ther handling of the dispute. The Panel shall, in determining its recommendation, give due consideration to the general purposes of this Act as stated in section 2.

"Fifth. The three Secretaries shall accept and implement forthwith or reject the recommendation of the Transportation Labor Panel within five days. If the three Secretaries reject the Panel's recommendation, they shall, concurrently with such rejection, select and implement forthwith any one of the three remaining alternative procedures provided in paragraph Sixth of this section.

"Sixth. The Transportation Labor Panel shall, pursuant to paragraph Fourth of this section, recommend to the Secretaries of Labor, Commerce, and Transportation one of the procedures specified in the following subparagraphs for the further handling of the unadjusted dispute.

"A. Take no further action in the unadjusted dispute;

"B. Appoint a fact-finding board composed of three neutral members to further investigate the merits and facts of the dispute with a hearing in which the parties may participate and make within thirty days its recommendations as to the terms of settlement of the dispute;

"C. Direct the parties to the dispute to make an agreement to arbitrate the dispute in accordance with Sections 7 and 8 of this Act to the extent not inconsistent herewith,

"(1) If the parties are unable to agree upon the terms of an arbitration agreement within ten days after the date of such direction, the Transportation Labor Panel shall determine within ten days thereafter the terms under which the arbitration is to be conducted and such determination shall have the same effect, including the preclusion of resort to either strike or lockout, as an agreement to arbitrate arrived at by the parties to the dispute in accordance with sections 7 and 8 of this Act.

"(2) The arbitration board shall consist of an odd number of members, not less than five, a majority of whom shall be public members appointed by the Secretaries of Labor, Commerce, and Transportation (one of whom shall be designated chairman), with the remaining members divided equally between and appointed by the carrier or carriers involved and the representative or representatives of the employees involved. If the parties so agree, the arbitration board shall consist of three members and the carrier or carriers, and the representatives of the employees shall each name one arbitrator; a third arbitrator, who shall be the chairman, shall be appointed by the three Secretaries. The number of members, including the number of public members,

shall be designated in the arbitration agreement or in the determination of the Transportation Labor Panel.

"(3) The arbitration board shall make a just and reasonable award which, in its judgment, constitutes a fair and equitable settlement of the dispute.

"(4) An arbitration award made pursuant to this subsection shall be filed as provided in section 8(k) of this Act, except that the United States District Court for the District of Columbia is hereby designed as the court in which the award is to be filed, and shall be subject to section 9 of this Act. The award shall continue in force for such time as the arbitration board shall designate in its award, not to exceed two years from its effective date; unless the parties agree otherwise, and thereafter until changed in accordance with the provisions of this Act.

"D. Direct each party to submit its final offer with respect to the matters in dispute to the National Mediation Board within three days and transmit its offer or offers to the party or parties at the same time. Within three days after their initial submission and exchange of final offers, either party may submit an additional final offer.

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"(1) If a party refuses to submit a final offer, the last offer made by such party during previous bargaining or mediation as determined by the National Mediation Board shall be deemed that party's final offer.

"(2) Each offer or additional offer submitted by a party pursuant to this section must constitute a complete resolution of all the issues involved in the dispute.

"(3) The parties shall continue to bargain collectively for a period of seven days after they receive the other parties' offer or offers. The National Mediation Board may act as mediator during such period.

"(4) If the parties reach an unconditional agreement on any part of the matters in dispute during such seven-day period, they may jointly advise the National Mediation Board that the final offer or offers submitted by them are to be revised to remove such matters therefrom.

"(5) If no settlement has been reached before the end of the period prescribed in subsection (3) of this subparagraph, the parties shall, within two days thereafter, select a three-member Final Offer Board, one member to be the chairman, to act as

final offer selectors. If the parties are unable to agree on the composition of the board, the three Secretaries shall appoint such members, designating one member the chairman thereof.

"(6) The Final Offer Board shall conduct hearings in which the parties may participate. Such hearings shall be completed and the board shall make its determination as hereinafter provided within thirty days after the date on which the board was appointed.

"(7) The board shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed by this section.

"(8) From the time of appointment of the board until it makes its determination, there shall be no communication by the members of the board with third parties concerning recommendations for settlement of the dispute.

"(9) The board shall select the final offer which it determines upon the basis of the record before it to be the most reasonable of the final offers submitted by the parties. The board shall not compromise or alter the final offer it selects.

"(10) The final offer selected by the board

shall be deemed to represent the contract between the parties as to the matters in dispute and shall have the same effect, including the preclusion of resort to either strike or lockout, as though arrived at by the agreement of the parties under this Act.

"(11) The final offer selected by the board pursuant to this subsection shall be filed as provided in section 8 (k) of this Act, except that the United States District Court for the District of Columbia is hereby designated as the court in which the final offer selected is to be filed, and to the extent not inconsistent herewith, shall be subject to section 9 of this Act.

"Seventh. Any panel or board established hereunder may act by majority vote. A vacancy on any board or panel established hereunder shall not impair the right of the remaining members to exercise all of the powers of the board or panel. In the event any member is unable or unwilling to serve or a vacancy occurs, his successor shall be selected in the same manner as in the original selection. Public or neutral members appointed to serve on any board or panel provided for by this section shall be paid reasonable compensation for their services in an amount to be fixed by the three Secretaries and shall be reimbursed for necessary traveling expenses and expenses actually incurred for sub-

sistence while serving as such members. Members appointed by the three Secretaries shall be wholly disinterested in the controversy, impartial, without bias as between the parties, and shall not be financially or otherwise interested in any carrier or organization of employees. All expenditures of such board or panel shall be allowed and paid on the presentation of itemized vouchers approved by the chairman.

"Eighth. For the purpose of carrying out its functions under this Act, any panel or board which may be created under this section is authorized to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, and allow them, while away from their home or regular place of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 (b) of title 5, United States Code, for persons in the Government service employed intermittently while so employed.

"Ninth. Any panel or board which may be created under this section may, if the parties consent or agree thereto, extend any time limits contained in this section."

SEC. 109. Title I of the Railway Labor Act is further amended by adding section 15 to read as follows:

SEC. 15. (a) It shall be unlawful for any person or labor organization or for any agent or member of such organization, to engage in, or to induce, encourage, or co-

erce any employee of any carrier to engage in a strike or refusal, in the course of his employment, to perform his regularly assigned duties, where an object thereof is to force, require, or induce any carrier or employee of any carrier to cease handling or transporting the property of, or to cease doing business with any person, or to cease its normal and regular interchange or other common carrier relations with any other carrier. Nothing contained in this section shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

"(b) Any United States district court within the territorial jurisdiction of which any violation of this section shall have been committed or shall be threatened shall have jurisdiction, at the instance of any aggrieved carrier or person, to grant the remedy of injunction, prohibitive or mandatory, which may be appropriate in the premises; and in any such action or proceeding the provisions of Sections 6 and 20 of the Act of October 15, 1914, as amended (15 U.S.C. 17 and 29 U.S.C. 52), and the provisions of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (29 U.S.C. 101–115), shall not be deemed to apply."

SEC. 110. Amend section 201 of title II of the Railway Labor Act by deleting the words "or subordinate official" and adding at the end thereof the following:

"The term 'employee' shall not include any individual employed as a supervisor. The term 'supervisor' means any individual having authority, in the interest of a carrier or carriers, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The term 'employee' shall include any person employed as a pilot, copilot, or other flight crew member, or as a purser, who works in such capacity in commercial operations more than 20 per centum of his working time."

SEC. 111. Amend section 204 of title II of the Railway Labor Act by adding the word "special" following the words "lawfully exercised by" in the second paragraph thereof.

SEC. 112. Amend section 204 of title II of the Railway Labor Act by deleting all language following the first semicolon in the third paragraph and substitute a period therefor.

SEC. 113. Sections 205 and 206 are repealed in their entirety.

SEC. 114. Sections 207 and 208 are redesignated sections 205 and 206.

TITLE II.—AMENDMENTS TO THE RAILROAD UNEMPLOYMENT INSURANCE ACT

SEC. 201. (a) Section 4(a-2) (iii) of the Railroad Unemployment Act is amended by deleting the words, "subject to the provisions of subsection (b) of this section," at the beginning of the paragraph; deleting the remainder of the paragraph after the word "employed"; and substituting a semicolon for the comma after the word "employed."

SEC. 201. (b) Section 4(a-2) of the Act is further amended by adding the following subsection:

"(iv) any day with respect to which the Board finds that, though not subject to the disqualification provided in paragraph (iii), he failed to report for work and perform his assigned duties during a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed."

SEC. 201. (c) Section 4(b) of the Act is repealed in its entirety, and sections 4(c), 4(d), and 4(e) are redesignated as sections 4(b), 4(c), and 4(d), respectively.

92D CONGRESS
1ST SESSION

H. J. RES. 364

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 18, 1971

Mr. STAGGERS (for himself and Mr. SPRINGER) (by request) introduced the following joint resolution; which was referred to the Committee on Interstate and Foreign Commerce

JOINT RESOLUTION

To provide alternate procedures to facilitate the settlement of the labor dispute between certain carriers by railroad and certain of their employees.

Whereas the labor dispute between the carriers represented by the National Railway Labor Conference and the Eastern, Western, and Southeastern Carriers Conference Committees and certain of their employees represented by the United Transportation Union (UTU), and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC), threatens essential transportation services of the Nation; and

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained; and

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act and the no-strike, no-lockout extension provided by the Joint Resolution of December 10, 1970 (Public Law 91-541) have been exhausted and have not resulted in settlement of the dispute; and

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers; and

Whereas Emergency Board Numbered 178 (created by Executive Orders 11558 and 11559, September 18, 1970) made its report to the President on November 9, 1970, which report has provided the basis for negotiation since that time resulting in a settlement between the carriers and two unions that were original parties to this dispute, has been generally accepted by the carriers, and has been partially adopted by the wage increases legislated by the Congress in the joint resolution of December 10, 1970; and

Whereas it is possible that resolution of this dispute could be best assured through the free action of the parties, restricted only to the degree necessary to assure the protection of the health and safety of all sections of the Nation; and

Whereas it is desirable to provide for alternative methods of resolution as an incentive to continued free collective bargaining: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States may invoke, effective March 1, 1971, or not later than seven days after the enactment of this resolution, whichever is later, either of the

following alternative procedures (section 2, or section 3) but not both, for resolution of this dispute:

SEC. 2. RECOMMENDATIONS OF EMERGENCY BOARD.—(a) If the President chooses to invoke the procedures provided in this section, no strike or lockout shall be permitted through the period of time granted the Special Railway Dispute Commission, established in subsection (d) of this section, for resolving the dispute and, further, the decision rendered by the Commission shall have the same effect (including the preclusion of resort to either strike or lockout) as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.).

(b) The following items are descriptive only of the recommendations contained in the report of Emergency Board Numbered 178, which the Special Railway Dispute Commission shall use as the basis for defining, formulating, and making effective a final resolution of the dispute as provided by subsection (e) of this section: *Provided*, That the Commission in the exercise of its responsibility and authority under subsection (e) of this section shall not be limited by the following descriptions but shall deal with each such recommendation in accordance with the discussion and analysis of the recommendation contained in the report of Emergency Board Numbered 178.

(1) An increase in the rate of pay, in addition to that

provided by Public Law 91–541, by 4 per centum effective April 1, 1971; by 5 per centum effective October 1, 1971; by 5 per centum effective April 1, 1972; and by 5 per centum effective October 1, 1972.

(2) Elimination of "shift rules" granting premium pay for work performed on the day after a holiday notwithstanding the fact that the actual holiday falls on the employee's rest day. (Applicable to agreements between BRAC and the respective carriers.)

(3) Establishment of a rule permitting the carrier to blank an employee's birthday holiday instead of paying premium rates. (Applicable to agreements between BRAC and the respective carriers.)

(4) Extension of personal injury and liability group insurance to all employees traveling in off-track vehicles authorized by the carriers—similar to the April 21, 1969, agreement with the Brotherhood of Railroad Signalmen and carriers. (Applicable to agreements between BRAC and the respective carriers.)

(5) Establishment of a rule requiring yard crews to service old industries located between the switching limits and industries currently served by such crews. (Applicable to agreements between UTU and the respective carriers.)

(6) Establishment of a rule modifying existing notice requirements for force reductions—similar to the 1969 Shop Craft Agreement.

(7) Establishment of a rule prohibiting additional and separate compensation for using radio communication systems. (Applicable to agreements between UTU and the respective carriers.)

(8) Establishing of a rule allowing the carriers to institute interdivisional runs. (Applicable to agreements between UTU and the respective carriers.) In defining, formulating, and making effectivo this rule pursuant to subsection (e) of section 2 of this resolution, the Commission shall also define, formulate, and make effective a modification of existing rules covering away-from-home oxpenses.

(9) Establishment of a rule allowing the carriers more flexibility in interchange operations. (Applicable to agreements between UTU and the respective carriers.)

(10) Establishment of a rule implementing certain Presidential Railroad Commission findings combining road and yard service. (Applicable to agreements between UTU and tho respective carriers.)

(11) Establishment of a rulo requiring the merger of road and yard seniority rosters. (Applicable to agreements between UTU and the respective carriers.)

(12) Establishment of a rule permitting work assignments to be made interchangeably between clerks and telegraphers. (Applicable to agreements between BRAC and the respective carriers.)

(13) Establishment of a rule permitting the carriers to assign other employees to assist a worker who otherwise may be required to work overtime. (Applicable to agreements between BRAC and the respective carriers.)

(14) Establish a moratorium on issues relating to those disposed of in this round of bargaining.

(c) (1) The parties to the dispute for which Emergency Board Numbered 178 was originally established shall create, within three months of the effective date of this resolution, a standing committee similar to the committee suggested by the Emergency Board, in order to effect a resolution of the issues which the Emergency Board recommended should be assigned to such a committee. At the conclusion of the three-month period, the parties shall notify the Secretary of Labor whether such a committee has been established and of the action which it has taken. If the parties report that no committee has been established, the Secretary of Labor shall provide such assistance to the parties as he deems appropriate to provide for the effective implementation of the recommendation.

(2) The following items are descriptive only of the issues the Emergency Board recommended be assigned to such standing committee:

(A) The revision of replacement of the dual system of pay, including the carrier request for restoration of

the mileage holddown and the elimination of arbitraries, and the union request for revision of car sale additives. (Applicable to agreements between UTU and their respective carriers.)

(B) The possibility of combining all yard and road service. (Applicable to agreements between UTU and their respective carriers.)

(C) The elimination of hostler positions. (Applicable to agreements between UTU and their respective carriers.)

(D) Any nonoperating union rules otherwise not disposed of in the report of the Emergency Board.

(d) There is hereby established a Special Railway Dispute Commission consisting of two members appointed by the carriers, two members appointed by the unions, three public members appointed jointly by the unions and the carriers who shall be selected within five days of the date of the President's selection of this alternative procedure. If either party fails to name any of its members to the Commission, or if they fail to name the three public members, within the five-day period, the Secretary of Labor shall name said member or members. One member shall be chosen by the Commission as chairman. The Commission shall make decisions on the basis of a majority vote of the members. Members of the Commission shall receive compensation at a rate of up to the

per diem equivalent of the rate for a GS–18 when engaged in the work of the Commission as prescribed by this section, including traveltime, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis. The National Mediation Board shall provide such services and facilities as may be necessary and appropriate in carrying out the purposes of this resolution. The Commission shall have the authority to hire experts and consultants, as provided in section 3 (d) (3) of this resolution.

(e) (1) The Commission shall have the authority and responsibility to define, formulate, and make effective all of the recommendations of the report of Emergency Board 178 described in (b) above and no others, unless otherwise provided in this resolution. The Commission shall issue a final determination by May 1, 1971.

(2) The Commission shall hold hearings in the same manner as provided in section 3 (e). The parties shall be afforded an opportunity to present their position on the definition and formulation of the Emergency Board's recommendations.

(3) The final determination by the Commission shall be binding on all parties and shall constitute a complete and

final disposition of all issues involved: *Provided, however,* That an agreement between the parties before May 1, 1971, on any recommendation shall relieve the Commission from further consideration of that item and shall constitute a final disposition of the issue involved.

(f) Any party to the dispute aggrieved by the final determination of the Commission may obtain review thereof in the same manner as provided for review of a panel decision in section 3 (b) (4) and (5) of this resolution.

(g) This section shall take effect immediately upon the invocation of its procedures by the President and shall remain in effect until such time as the Commission certifies to the President that it has completed its responsibilities or that a resolution of the dispute has been reached by the parties.

(h) The binding effect of the recommendations and the prohibition on strikes or lockouts required by this section shall expire on December 31, 1972: *Provided, however,* That the Commission may extend such date for such a period of time as it deems appropriate under such terms as it considers equitable, including the granting of a pay rate increase or increases, in addition to those described in subsection (b) (1) of this section, on such dates and in such amounts as the Commission deems appropriate. Such time

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extension and rate increase determination shall be binding on all parties as provided in subsection (e) (3) of this section.

SEC. 3. SELECTIVE STRIKE LOCKOUT.—(a) If the President chooses to invoke the procedures provided in this section, no strike or lockout shall be permitted except as authorized by an order of the Emergency Railway Dispute Panel (hereinafter referred to as Panel), established in subsection (d) of this section.

(b) When any party to this dispute intends to engage in a strike or lockout, it shall, by certified mail, notify the Secretary of Labor of such intention and send copies of the notification to the other parties to the dispute. The Secretary of Labor shall transmit such notifications to the Panel in the order in which they are received.

(1) Each notification shall state the intention of the party to engage in a total strike or lockout of an individual carrier fifteen days after the delivery of the notification to the Panel. A separate notification shall be required in regard to each individual carrier. The notification shall state with particularity (a) the carrier to be struck or locked out, and (b) the existence of alternative rail, water, highway, or air transportation services, or any combination thereof, which will not endanger the health or safety of the Nation or any section thereof.

(2) The Panel shall determine, by order, after a hearing, whether the proposed total strike or lockout of a carrier shall be permitted as consistent with the health and safety of the Nation and all sections thereof and shall make such decisions and issue such orders as are necessary to carry out this responsibility. The Panel, in developing its order approving any selective strike or lockout, shall make provision to insure that only the operations of the struck or locked out carrier shall be directly curtailed by such permitted action. The Panel shall, in making such a determination, take into account the cumulative effect of any of its prior orders permitting a strike or lockout. The Panel shall be further authorized to consolidate notification proposals for the purpose of conducting hearings, rendering decisions, and issuing orders. If the notifications of two or more parties deal with the same or related rail operations, in a way in which any one such notification could be implemented, singly, without endangering health or safety, but not all of them could be so implemented, the Panel shall give preferred consideration to such notifications in the order in which they were received by the Secretary.

(3) The Panel shall not approve any notification proposing a strike or lockout where the effect of the proposal would be to (1) deprive the Nation of the transport of material or personnel essential to the national defense, or (2) to

deprive any section of the Nation of the transportation services required to maintain the basic health or safety of that section: *Provided, however,* That mere inconvenience to a section of the Nation shall not be deemed a threat to its basic health or safety.

(4) The orders of the Panel shall be deemed final upon their issuance. Any party aggrieved by an order of the Panel may, within fifteen days after its issuance, obtain review of the order in the United States Court of Appeals for the District of Columbia. The decision of the court of appeals may be reviewed in the Supreme Court by writ of certiorari or upon certification as provided for in section 1254 (1) and (3), title 28, United States Code. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Panel.

(5) An order of the Panel shall be conclusive unless found to be arbitrary or capricious.

(6) On notice to the parties, and following a hearing, the Panel may cancel an order authorizing a strike or lockout as it deems necessary to effectuate the purposes of this Act. Such cancellations are subject to the provisions of subsections (b) (3), (4), and (5) of this section.

(c) (1) If a settlement is reached in this dispute by any union with any one or more carriers, but less than all

carriers, such settlement or settlements shall be submitted to the National Railway Labor Conference by the union. The National Railway Labor Conference shall have the option, for ten days from submission, of accepting any such settlement as a solution of the dispute for all member carriers represented by it; and that settlement shall be binding upon the union involved and the carriers represented by the Conference.

(2) If the settlement submitted to the Conference pursuant to paragraph (1) above is not accepted within the ten-day option period, each individual carrier shall be permitted ten additional days in which to individually accept the settlement, which acceptance shall be binding upon the union involved and the individual accepting carrier.

(3) The provisions of this subsection shall be invoked only once for each union which is a party to this dispute and no authorized strike or lockout need be suspended prior to acceptance of a settlement.

(d) (1) There is hereby established an Emergency Railway Dispute Panel consisting of two members appointed by the carriers, two members appointed by the unions, three public members appointed jointly by the unions and the carriers who shall be selected within five days of the date upon which the President invokes the procedures of this section 3. If either party fails to name any of its members to

the Commission, or if they fail to name the three public members, within the five-day period, the Secretary of Labor shall name said member or members. One member of the Panel shall be selected as chairman. The Panel shall make decisions based on a majority vote of the members.

(2) Members of the Panel shall receive compensation at a rate of up to the per diem equivalent of the rate for a GS–18 when engaged in the work of the Panel as prescribed by this section, including traveltime, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis. The National Mediation Board shall provide such services and facilities as may be necessary and appropriate in carrying out the purposes of this resolution.

(3) For the purpose of carrying out its functions under this section, the Panel is authorized to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 (b) of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

(e) The following rules of procedure shall be applicable to the Panel's functions under this section:

(1) NOTICE OF HEARING.—Upon receipt of notifications the Panel shall promptly notify and inform the Government and all parties to the dispute of the time, place, and nature of the hearings, and the matters to be covered therein.

(2) HEARING TO BE PUBLIC.—The Panel shall hold public hearings, unless it determines private hearings are necessary in the interest of national security, or the parties and the Government agree to present their positions in writing. The record made at such hearing shall include all documents, statements, exhibits, and briefs, which may be submitted, together with the stenographic record. The Panel shall have authority to make whatever reasonable rules are necessary for the conduct of an orderly public hearing. The Panel may exclude persons other than the parties at any time when in its judgment the expeditious inquiry into the dispute so requires.

(3) PARTICIPATION BY PANEL IN THE HEARING.—The Panel, or any member thereof, may, on its own initiative, at such hearing, call witnesses and introduce documentary or other evidence, and may participate in the examination of witnesses for the purpose of expediting the hearing or eliciting material facts.

(4) PARTICIPATION BY PARTIES IN HEARING.—The

parties and the Government shall be given reasonable opportunity: (a) to be present in person at every stage of the hearing; (b) to be represented adequately; (c) to present orally or otherwise any material evidence relevant to the issues; (d) to ask questions relating to the evidence of other parties or of a witness relating to evidence offered or statements made by the party or witness at the hearing, unless it is clear that the questions have no material bearing on the credibility of that party or witness or on the issues in the case; (e) to present to the Panel oral or written argument on the issues.

(5) STENOGRAPHIC RECORDS.—An official stenographic record of the proceedings shall be made. A copy of the record shall be available for inspection by the parties.

(6) RULES OF EVIDENCE.—The hearing may be conducted informally. The receipt of evidence at the hearing need not be governed by the common law rules of evidence.

(f) This section shall take effect immediately upon the invocation of its procedures by the President and shall remain in effect until such time as the Panel certifies to the President that a resolution of the dispute has been reached by all of the parties.

(g) Any provision or interpretation of the Railway Unemployment Insurance Act (52 Stat. 1094), as amended (45 U.S.C. 351 et seq.), which provides that an employee

covered by the provisions of that Act shall receive benefits while on strike is hereby suspended for the duration of any strike with regard to any employee who participates in any strike in the above described dispute.

SEC. 4. During the period in which the President may select an alternative pursuant to the provisions of this resolution, no strike or lockout shall be permitted.

SEC. 5. Any strike, lockout or other concerted activity in violation of this resolution shall be subject to a penalty not to exceed $100,000. Each calendar day in which such a violation occurs shall be considered a separate violation. The Attorney General of the United States shall be authorized to maintain any civil action necessary to obtain compliance with any provision of this resolution.

DEPARTMENT OF DEFENSE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., March 15, 1971.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to H.R. 3595, 92d Congress, a bill "To amend the Railway Labor Act to avoid interruptions of railroad transportation that threaten national safety and health by reason of labor disputes, and for other purposes."

The bill would amend Section 10 of the Railway Labor Act (45 U.S.C. 160) and basically would: (1) declare it unlawful for any carrier to lock out any craft or class of its employees or to diminish its transportation services in consequence of a labor dispute unless caused to do so by a strike; (2) permit with certain exceptions the carrier to act unilaterally to put into effect its proposals on rates of pay, rules, or working conditions following exhaustion of defined procedures; (3) enable the employees to engage in a selective strike of carriers following the exhaustion of defined procedures; and (4) provide that essential transportation requirements will be met regardless of any strike that may occur.

Although H.R. 3595 would establish a basis for avoiding certain interruptions to rail transportation, it does not provide the necessary framework for dealing with national emergency disputes for the entire transportation industry which includes railroads, airlines, longshoremen, and trucks. The discontinuation of any of these services could adversely affect the Department of Defense in accomplishing its mission.

The "Emergency Public Interest Protection Act", which was proposed to the Congress by the President and introduced as H.R. 3596, treats disputes which arise throughout the entire transportation industry.

H.R. 3596 is, therefore, more responsive to the requirements of the Department of Defense. Accordingly, the Department of Defense urges enactment of "The Emergency Public Interest Protection Act." H.R. 3596, in lieu of H.R. 3595.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report and that the enactment of H.R. 3596 would be in accord with the program of the President.

Sincerely,

J. FRED BUZHARDT.

DEPARTMENT OF DEFENSE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., March 15, 1971.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to H.R. 3596, 92d Congress, a bill "To provide more effective means for protecting the public interest in national emergency disputes involving the transportation industry, and for other purposes."

H.R. 3596, the "Emergency Public Interest Protection Act of 1971," proposed to the Congress by the President early in 1970 and again this year, would provide additional protection for the public interest in those labor disputes in the transportation industry which imperil the national health or safety and for other purposes. The bill provides additional options to the President that carefully balance the needs of the public and the rights of the parties to free collective bargaining. More specifically, H.R. 3596 would give the President new authority to deal with national emergency disputes in the railroad, airline, maritime, longshore, and trucking industries by establishing a framework for settling emergency transportation disputes in a reasonable and orderly fashion and without an unnecessary impact upon the public.

The Commercial transportation system provides direct and indirect support to the Department of Defense in peacetime. In addition, contingent plans provide for the use of our nation's transportation system during periods of emergen-

cies; consequently, the Department of Defense would welcome the enactment of H.R. 3596 as a means to assure that adequate commercial transportation is available to meet the needs of national defense on a timely basis.

The Office of Management and Budget advises that the enactment of H.R. 3596 would be in accord with the program of the President.

Sincerely,

J. FRED BUZHARDT.

DEPARTMENT OF DEFENSE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., March 15, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to H.R. 8385, 92d Congress, a bill "To amend the Railway Labor Act to provide more effective means for protecting the public interest in national emergency disputes involving the rail and airline transportation industries, and for other purposes."

The purpose of H.R. 8385 is as stated in its title. More specifically the bill would amend the Railway Labor Act by establishing certain procedures which can be invoked by the President to resolve labor disputes in the rail and airline industries while at the same time ensuring that there will be no disruption of essential transportation services.

Although H.R. 8385 would establish a basis for avoiding certain interruptions to rail and airline transportation, it does not provide the necessary framework for dealing with national emergency disputes for the entire transportation industry which includes railroads, airlines, longshoremen, marine transportation, and trucks. The discontinuation of any of these services could adversely affect the Department of Defense in accomplishing its mission.

The "Emergency Public Interest Protection Act", which was proposed by the President and introduced as H.R. 3596, treats disputes which arise throughout the entire transportation industry. H.R. 3596 is, therefore, more responsive to the requirements of the Department of Defense. Accordingly, the Department of Defense urges enactment of H.R. 3596, in lieu of H.R. 8385.

The Office of Management and Budget advises that there is no objection to the presentation of this report for the consideration of the Committee and that the enactment of H.R. 3596 would be in accord with the President's program.

Sincerely,

J. FRED BUZHARDT.

DEPARTMENT OF DEFENSE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., July 22, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to H.R. 9088, 92d Congress, a bill "To amend the Railway Labor Act to provide more effective means for protecting the public interest in national emergency disputes involving the railroad and airline transportation industries, and for other purposes."

The purpose of H.R. 9088 is as stated in the introduction to the bill. More specifically the bill will amend the Railway Labor Act by establishing certain procedures which can be invoked by the President to resolve labor disputes in the rail and airline industries while at the same time ensuring that there will be no disruption of essential transportation services.

Although H.R. 9088 would establish a basis for avoiding certain interruptions to rail and airline transportation it does not provide the necessary framework for dealing with national emergency disputes for the entire transportation industry which includes railroads, airlines, longshoremen, marine transportation, and trucks. The discontinuation of any of these services could adversely affect the Department of Defense in accomplishing its mission.

The "Emergency Public Interest Protection Act", which was proposed to the

Congress by the President and introduced as H.R. 3596, treats disputes which arise throughout the entire transportation industry. H.R. 3596 is, therefore, more responsive to the requirements of the Department of Defense. Accordingly, the Department of Defense urges enactment of "The Emergency Public Interest Protection Act", H.R. 3596, in lieu of H.R. 9088.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee and that the enactment of H.R. 3596 would be in accord with the program of the President.

Sincerely,

J. FRED BUZHARDT.

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 1, 1971.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for our views on H.R. 3596, "Emergency Public Interest Protection Act of 1971," the Administration's bill, H.R. 901 (identical to H.R. 3596), H.R. 3595, a bill "To amend the Railway Labor Act to avoid interruptions of railroad transportation that threaten national safety and health by reason of labor disputes and for other purposes," and H.R. 2357, a bill to amend section 10 of the Railway Labor Act to settle emergency disputes.

On February 3, 1971, President Nixon sent a message to Congress proposing enactment of the Emergency Public Interest Protection Act to prevent crippling strikes and lockonts in the transportation industry. The proposal had also been recommended to the 91st Congress by the President.

In brief, it would repeal the emergency strike provisions of the Railway Labor Act and give the President three new options in dealing with such emergency disputes. If the strike were not settled in the 80-day cooling-off period, the President could select one of the following:

1. Extend the cooling-off period for as long as 30 days.
2. Empanel a board to determine the feasibility and boundaries of a partial operation.
3. Invoke final offer selection whereby a panel would select without alteration the most reasonable offer of the parties as a final and binding contract.

H.R. 3595 on the other hand would provide a method for allowing selective strikes under the Railway Labor Act where they do not endanger national health or safety. This approach does not provide the President with the options provided by the Administration bill which are necessary for effectively resolving emergency disputes.

H.R. 2357 would give the President a range of options to preclude a strike or lockout under the Railway Labor Act, including arbitration by a special board and seizure and operation of the line. However, I prefer the carefully balanced options set forth in the Administration bill which would have the effect of maintaining pressure on the parties to arrive at their own agreement.

I strongly support the proposal of the President and believe that it would establish a framework in which the pressures would exist for settling emergency transportation disputes in a reasonable and orderly fashion.

The Office of Management and Budget advises that enactment of H.R. 3596 would be in accord with the program of the President.

Sincerely,

J. D. HODGSON, *Secretary of Labor.*

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 20, 1971.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for our views on H.R. 8385, a bill "To amend the Railway Labor Act to provide more effective means for protecting the public interest in national emergency disputes involving the railroad and airline transportation industries."

This bill provides a mechanism for settlement of emergency disputes in the airline and railroad industry when a work stoppage "threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation."

The mechanism would give the President three options, after a 60-day cooling-off period. The President could—

(1) allow a selective strike, with the provision that transportation services that are essential to the national health or safety are provided;

(2) exend the cooling-off period 30 days;

(3) invoke final-offer selection, whereby a panel would select without alteration the most reasonable offer of the parties as a final and binding contract.

Initially the President is required to use the selective strike unless it would endanger the health and safety of the nation.

On February 3, 1971, President Nixon sent a message to Congress proposing enactment of the Emergency Public Interest Protection Act of 1971 (H.R. 3596) to prevent crippling strikes and lockouts in the transportation industry. The proposal had also been recommended to the 91st Congress by the President.

In brief, it would repeal the emergency strike provisions of the Railway Labor Act and give the President three new options in dealing with such emergency disputes. If the strike were not settled in the 80-day cooling-off period, the President could select one and only one of the following:

(1) extend the cooling-off period for as long as 30 days;

(2) empanel a board to determine the feasibility and boundaries of a partial operation; or

(3) invoke final offer selection, whereby a panel would select without alteration the most reasonable offer of the parties as a final and binding contract.

The Administration's bill (H.R. 3596) also proposes to reform the Railway Labor Act by providing a method for termination of contracts, as well as providing a new procedure for settlement of grievances free from an unhealthy reliance on the Federal Government.

I strongly support the Administration's Emergency Disputes bill.

H.R. 8385, although similar to the Administration bill in that it provides the President with alternatives to invoke after a cooling-off period expires, differs in its approach to the problem and its scope.

The Administration's bill has two major goals: to protect the health and safety of the nation from damaging work stoppages and to minimize Governmental intervention in transportation labor disputes.

Consistent with this approach, the Administration bill builds on the basic framework of the Taft-Hartley Act, which authorizes the President to deal only with disputes that affect the national health and safety. H.R. 8385 incorporates the broader provisions of the Railway Labor Act, which permits the President to intervene in regional disputes.

The Administration bill would apply to all transportation industries (trucking, maritime, longshore, railroads and airlines); H.R. 8385 would cover only the airlines and railroads. Experience under both Taft-Hartley and the Railway Labor Act indicates emergency disputes in all transportation industries may be troublesome and protracted. Our interdependent economy is vulnerable to any major interruption in the flow of goods and, therefore, a work stoppage in any one of the transportation industries could have a deleterious effect on the whole economy.

Moreover, section 306 of H.R. 8385 contains some language specifically applicable only to railroads, such as the reference to regional conference committees in 306(a). Under such limiting language the selective strike option would apparently not apply in the airline industry.

The Administration bill provides for optitons which would serve, both individually and collectively, to reduce the number of disputes reaching critical proportions and to permit flexible treatment of those disputes that persist. The philosophy of this approach is to leave the parties uncertain as to what form Government intervention might take, thus encouraging serious collective bargaining early in the dispute.

In contrast, H.R. 8385 structures the options so that the President is required to authorize "selective strikes" initially, unless doing so would immediately imperil the national health and safety. In effect this relegates the other options to a secondary position, and detracts from the basic purpose of the options, which is to create uncertainty as to the type of Government intervention.

We feel that H.R. 8385's provision for pyramiding of options—that is, permitting the President to use more than one option in an emergency situation—is not likely to promote prompt settlements. Such a course might actually exacerbate tension between the parties and lessen the possibility of their resolving the dispute between themselves.

The Office of Management and Budget advises that there is no objection to the submission of this report and enactment of H.R. 3596 would be in accord with the program of the President.

Sincerely,

J. D. HODGSON, *Secretary of Labor.*

NATIONAL MEDIATION BOARD,
OFFICE OF THE CHAIRMAN,
Washington, D.C., March 15, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: On February 10, 1971 you referred to the Chairman of the National Mediation Board for a prompt report, a copy of H.R. 901, a bill introduced by Congressman Mayne, "To provide more effective means for protecting the public interest in national emergency disputes involving the transportation industry, and for other purposes."

It is understood that this bill contains legislative recommendations submitted to Congress by the President on February 3, 1971.

Although the Board appreciates the opportunity to examine the substantive provisions of the above-mentioned omnibus bill, which in part repeals major provisions of the Railway Labor Act, we must respectively request the committee's indulgence and understanding in not commenting on said bill. It is possible that various legislative proposals contained in H.R. 901 will be the subject of controversy between the parties in interest. Hence, it is imperative that this Agency, as a mediation board, maintain the strictest neutrality in such matters in order not to impair its present usefulness.

If your committee schedules any hearings on H.R. 901 or other related legislation, the National Mediation Board will be pleased to present testimony concerning its functions under the Railway Labor Act as presently constituted with particular emphasis on the mediation activities of the Board.

We trust that your committee will understand our position as you have in similar matters in the past.

The Office of Management and Budget advises that it has no objection to the presentation of this report and that enactment of H.R. 901 would be in accord with the program of the President.

Sincerely,

GEORGE S. IVES, *Chairman.*

NATIONAL MEDIATION BOARD,
OFFICE OF THE CHAIRMAN,
Washington, D.C., March 15, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: On February 16, 1971 you referred to the Chairman of the National Mediation Board for a prompt report, a copy of H.R. 2357, a bill introduced by Congressman Pickle, "To amend section 10 of the Railway Labor Act to settle emergency transportation labor disputes."

Although the Board appreciates the opportunity to examine the substantive provisions of the above-mentioned bill, which would revise a major provision of the Railway Labor Act, we must respectfully request the Committee's indulgence and understanding in not commenting on said bill. It is possible that the legislative proposals contained in H.R. 2357 will be the subject of controversy between the parties in interest. Hence, it is imperative that this agency, as a mediation board, maintain the strictest neutrality in such matters in order not to impair its present usefulness.

If your committee schedules hearings on H.R. 2357 and other related legislation, the National Mediation Board would be pleased to present testimony concerning

its functions under the Railway Labor Act as presently constituted with particular emphasis on the mediation activities of the Board.

We trust that your Committee will understand our position as it has in similar matters in the past.

The Office of Management and Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

GEORGE S. IVES, *Chairman.*

NATIONAL MEDIATION BOARD,
OFFICE OF THE CHAIRMAN,
Washington, D.C., March 15, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: On February 10, 1971, your referred to the Chairman of the National Mediation Board for a prompt report, a copy of H.R. 3595, a bill introduced by yourself and others, "To amend the Railway Labor Act to avoid interruptions of railroad transportation that threaten national safety and health by reason of labor disputes, and for other purposes."

We must respectfully request the Committee's indulgence and understanding in not commenting on said bill. It is possible that various legislative proposals contained in H.R. 3595 will be the subject of controversy between the parties in interest. Hence, it is imperative that this agency, as a mediation board, maintain the strictest neutrality in such matters in order not to impair its present usefulness.

If your committee schedules hearings on H.R. 3595 and other related legislation, the National Mediation Board would be pleased to present testimony concerning its functions under the Railway Labor Act, as presently constituted, with particular emphasis on the mediation activities of the Board.

We trust that your committee will understand our position as you have in similar matters in the past.

The Office of Management and Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

GEORGE S. IVES, *Chairman.*

NATIONAL MEDIATION BOARD,
OFFICE OF THE CHAIRMAN,
Washington, D.C., March 15, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: On February 16, 1971 you referred to the Chairman of the National Mediation Board for a prompt report, a copy of H.R. 3596, a bill introduced by yourself and Congressman Springer, "To provide more effective means for protecting the public interest in national emergency disputes involving the transportation industry, and for other purposes."

It is understood that this bill contains legislative recommendations submitted to Congress by the President on February 3, 1971.

Although the Board appreciates the opportunity to examine the substantive provisions of the above-mentioned omnibus bill, which in part repeals major provisions of the Railway Labor Act, we must respectively request the committee's indulgence and understanding in not commenting on said bill. It is possible that various legislative proposals contained in H.R. 3596 will be the subject of controversy between the parties in interest. Hence, it is imperative that this Agency, as a mediation board, maintain the strictest neutrality in such matters in order not to impair its present usefulness.

If your committee schedules any hearings on H.R. 3596 or other related legislation, the National Mediation Board will be pleased to present testimony concerning its functions under the Railway Labor Act as presently constituted with particular emphasis on the mediation activities of the Board.

We trust that your committee will understand our position as you have ir similar matters in the past.

The Office of Management and Budget advisers that it has no objection to the presentation of tbis report and that enactment of H.R. 3596 would be in accord witb tbe program of the President.

Sincereiy,

GEORGE S. IVES, *Chairman.*

NATIONAL MEDIATION BOARD,
OFFICE OF THE CHAIRMAN,
Washington, D.C., March 15, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Rayburn House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: On March 8, 1971 you referred to the Cbairman of the National Mediation Board for a prompt report, a copy of H.R. 5347, a bill introduced by Mr. Dingeil, "To amend the Railway Labor Act to establish a method for settiing labor disputes in transportation industries subject to that Act."

Although the Board appreciates the opportunity to examine the substantive provisions of tbe above-mentioned bill, we must respectfuiiy request tbe Committee's induigence and understanding in not commenting on said bill. It is possible that the legisiative proposals contained in H.R. 5347 will be the subject of controversy between the parties in interest. Hence, it is imperative that this agency, as a mediation board, maintain tbe strictest neutrality in such matters in order not to inipair its present usefulness.

If your committee scheduies hearings on H.R. 5347 and other related legislation, tbe National Mediation Board would be pieased to present testimony concerning its functions under the Raiiway Labor Act as presently constituted with particuiar empbasis on the mediation activities on tbe Board.

We trust that your Committee wiii understand our position as it has in similar matters in the past.

The Office of Management and Budget advises tbat it has no objection to tbe presentation of this report from tbe standpoint of the Administration's program.

Sincereiy,

GEORGE S. IVES, *Chairman.*

NATIONAL MEDIATION BOARD,
OFFICE OF THE CHAIRMAN,
Washington, D.C., May 27, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Rayburn House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: On May 17, 1971 you referred to the Cbairman of the National Mediation Board for a prompt report, a copy of H.R. 8385, a bill introduced by Congressman Harvey, "To amend tbe Raiiway Labor Act to provide more effective means for protecting the public interest in national emergency disputes invoiving the raiiroad and airiine transportation industries, and for other purposes."

Altbough the Board appreciates tbe opportunity to examine tbe substantive provisions of the above-mentioned biii, we must respectfuiiy request tbe Committee's induigence and understanding in not commenting on said bill. It is possibie that tbe iegislative proposals contained in H.R. 8385 wiii be the subject of controversy between tbe parties in interest. Hende, it is imperative that this agency, as a mediation board, maintain tbe strictest neutrality in such matters in order not to impair its present usefuiness. We trust tbat your Committee wiii understand our position in tbis matter.

The Office of Management and Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincereiy,

GEORGE S. IVES, *Chairman.*

NATIONAL MEDIATION BOARD,
OFFICE OF THE CHAIRMAN,
Washington, D.C., March 17, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: On February 24, 1971 you referred to the Chairman of the National Mediation Board for a prompt report, a copy of House Joint Resolution 364, a bill introduced by yourself and Mr. Springer, by request, "To provide alternate procedures to facilitate the settlement of the labor dispute between certain carriers by railroad and certain of their employees."

Although the Board appreciates the opportunity to examine the substantive provisions of the above-mentioned joint resolution, we must respectfully request the Committee's indulgence and understanding in not commenting on said joint resolution. It is possible that the legislative proposals contained in H.J. Res. 364 will be the subject of controversy between the parties in interest. Hence, it is imperative that this agency, as a mediation board, maintain the strictest neutrality in such matters in order not to impair its present usefulness.

If your committee schedules hearings on H.J. Res. 364 and other related legislation, the National Mediation Board would be pleased to present testimony concerning its functions under the Railway Labor Act as presently constituted with particular emphasis on the mediation activities of the Board.

We trust that your committee will understand our position as it has in similar matters in the past.

The Office of Management and Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

GEORGE S. IVES, *Chairman.*

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 15, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your requests for the views of this Office on H.R. 901, the "Emergency Public Interest Protection Act of 1971," and H.R. 3596, the "Emergency Public Interest Protection Act of 1971."

H.R. 3596 is legislation recommended by the President in his message of February 3, 1971. In that message, the President outlined the need to prevent crippling strikes and lockouts in the transportation industry. The President stated:

"The legislation I propose today would establish a framework for settling emergency transportation disputes in a reasonable and orderly fashion, fair to the parties and without the shattering impact on the public of a transportation shutdown. I urge that . . . we not wait for the next emergency, but rather join together in acting . . . now."

H.R. 901 is identical to H.R. 3596.

Accordingly, we strongly recommend enactment of H.R. 3596 or H.R. 901. Enactment of either of these bills would be in accord with the program of the President.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 15, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of February 16, 1971, for the views of this Office on H.R. 2357, a bill "To amend section 10 of the Railway Labor Act to settle emergency transportation labor disputes."

In its report on H.R. 2357, the Department of Labor indicates that although the bill would give the President a range of options to preclude a strike or lock-

under the Railway Labor Act, the Department prefers the carefully balanced options set forth in the Administration's bill, H.R. 3596, the "Emergency Public Interest Protection Act of 1971," which would have the effect of maintaining pressure on the parties to arrive at their own agreement.

Accordingly, we recommend the enactment of H.R. 3596 or identical bills H.R. 901 and H.R. 4116, rather than H.R. 2357.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 15, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of February 10, 1971, for the views of this Office on H.R. 3595, a bill "To amend the Railway Labor Act to avoid interruptions of railroad transportation that threaten national safety and health by reason of labor disputes, and for other purposes."

In his message of February 3, 1971, the President recommended legislation to prevent crippling strikes and lockouts in the transportation industry. That proposal has been introduced as H.R. 3596, the "Emergency Public Interest Protection Act of 1971." As the Department of Labor indicates in its report on H.R. 3595, that bill does not provide the President with the options provided by the Administration bill, H.R. 3596, which are necessary for effective resolution of emergency disputes.

We concur in the views expressed by the Department of Labor on H.R. 3595 and, accordingly, recommend enactment of H.R. 3596 rather than H.R. 3595. Enactment of H.R. 3596 would be in accord with the program of the President.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 31, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of March 8, 1971, for the views of this Office on H.R. 5347, a bill "To amend the Railway Labor Act to establish a method for settling labor disputes in transportation industries subject to that Act."

In his message of February 3, 1971, the President recommended legislation to prevent crippling strikes and lockouts in the transportation industry. Draft legislation—the "Emergency Public Interest Protection Act of 1971"—was submitted by the Department of Labor and has been introduced as H.R. 3596.

Accordingly, we recommend enactment of H.R. 3596 rather than H.R. 5347. Enactment of H.R. 3596 would be in accord with the program of the President.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislativ Reference.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., August 2, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of May 17, 1971 for the views of this Office on H.R. 8385, a bill "To amend the Railway Labor Act

to provide more effective means for protecting the public interest in national emergency disputes involving the railroad and airline transportation industries."

In its report to your Committee on H.R. 8385, the Department of Labor discusses its reasons for strongly supporting the enactment of H.R. 3596, the Administration's Emergency Public Interest Protection Act.

We concur in the views expressed in the report of the Department of Labor and, accordingly, recommend favorable action on H.R. 3596, enactment of which would be in accord with the President's program.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., June 18, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department with regard to H.R. 3595, a bill "To amend the Railway Labor Act to avoid interruptions of railroad transportation that threaten national safety and health by reason of labor disputes, and for other purposes."

and H.R. 3596, a bill "To provide more effective means for protecting the public interest in national emergency disputes involving the transportation industry, and for other purposes."

H.R. 3596 would, among other things, amend the Labor-Management Relations Act to permit selective strikes against interstate railroads under certain circumstances. We prefer the provision for selective strikes included in H.R. 3596, for reasons set out below.

Subsection (b) of H.R. 3595 would prohibit defensive lockouts by a railroad unless that railroad was, in fact, struck by its employees. The subsection seems to alter the balance of power in the collective bargaining process in favor of the employees.

Subsection (c) of the amended Act would permit a railroad to change pay rates, rules, and working conditions after the procedures of the Act had been exhausted. However, this right is available only if these changes were not in anticipation of or in response to a labor proposal on the same subject *and* if the railroad had not been struck at the time the changes were instituted. As a union may strike as soon as the procedures of the Act are exhausted, this right appears to be illusory.

Subsection (d) would permit selective strikes against not more than three railroads in any ICC region where the aggregate revenue ton miles of such railroads in the previous calendar year did not exceed 40% of the aggregate revenue ton miles of all railroads in that region. This subsection would need to be clarified to ensure the protection of public health, welfare and safety.

Subsection (e) of the amended Act would permit provision of essential rail services by the Secretary of Transportation during a strike. The subsection thus provides for a form of partial operation. While, as a matter of principle, we approve of vesting sufficient power in the Secretary of Transportation to assure the protection of the national interest during national transportation disputes, we prefer the mechanism for partial operations included in Title I, section 218, of H.R. 3596, which we discuss below.

We strongly favor the provisions of H.R. 3596. This legislation was submitted at the request of the Administration. As the President stated on February 3, 1971:

"Early in 1970, I proposed to the Congress a new approach for dealing with national emergency labor disputes in the transportation industry. The proposal was based on my belief that existing law did not provide adequate remedies for settling such disputes, and thus failed to protect the national interest.

"Today, I am again recommending that proposal, the Emergency Public Interest Protection Act. Events since the bill's first introduction have made its enactment even more urgent. I am hopeful that the Congress will give the proposal its prompt and favorable consideration—before there is another crisis in the transportation industry."

The bill provides additional options to the President designed to balance the needs of the public and the rights of free collective bargaining.

The bill also amends the Railway Labor Act to promote greater utilization of private collective bargaining procedures rather than reliance upon governmental intervention. In addition, the bill provides for a Special Industries Commission to study labor relations in those industries which are particularly vulnerable to national emergency disputes and make recommendations concerning such industries. Finally, the bill contains a Title IV which has several miscellaneous provisions having an important effect on the railroad industry.

Perhaps the most significant part of the bill is Title I, which amends the Labor Management Relations Act. H.R. 3596 would not change the existing national emergency dispute provisions of Title II of the Labor-Management Relations Act as they apply to industries other than Transportation. However, it would make the national emergency provisions of the Labor-Management Relations Act applicable to *all* transportation industries, by repealing the emergency procedures of the Railway Labor Act and bringing the railroads and airlines under the basic emergency provisions now applicable to other industries.

In recognition of the special nature of the transportation industries, the President would be empowered to use, in addition to the basic emergency dispute provisions of the Labor-Management Relations Act, one of the three new options for dealing with national emergency disputes in the transportaton industries. These optional procedures could be used if a national emergency transportation dispute was stil unresolved after the expiration of the 80-day cooling-off period provided for in the Labor-Management Relations Act. Because of the potential impact of these options, the basic 80-day injunction would have to be issued by a three judge court in the case of national emergency disputes in the transportation industries. Transportation is defined to include railroads, airlines, maritime (incinding longshore), and trucking.

The President would be empowered to choose any *one* of these new procedures—but if the one chosen does not result in the resolution of the dispute, the provisions in current law for a report to the Congress would remain in effect. The three alternatives are essentially as follows:

I. *Extension of the Cooling-off Period:* On occasion when a dispute may be readily resolved by the parties by a mere extension of the cooling-off period, the President would be authorized to extend the period, with continued bargaining between the parties for a period of up to thirty days.

II. *Partial Operations:* Even when the shutdown of an entire industry imperils the national health and safety, it may be possible to make an acceptable accommodation between the right to strike or lockout and the national good. Such an accommodation conid rest in arranging for operation of only an essential part of the industry or by requiring production or service only to a critical class of customers.

It would be unwise and difficult to attempt the diversion of an industry into essential and nonessential components in the critical period preceding the issuance of an injunction. But if the parties do not reach agreement in the 80-day cooling-off period, partial operation deserves consideration and H.R. 3596 would authorize the President, as one of his options, to appoint a special board and direct them to review the feasibility of partial operations. Any party or any member of the board could present to the board a plan defining the strike or lockout action that would be consistent with the public interest. The board, after appropriate hearings in which the government would be a party to protect the pnblic interest, could adopt or modify the plan. Before approving the plan, the board would aiso have to find that the partial strike or lockout is sufficientiy extensive to encourage resolution of the dispute; in other words, that sufficient economic pressure will remain on both sides to encourage an early resolution.

The board's decision must be made within 30 days and during that period the status quo must be maintained. Partial operation pursuant to the board's decision would be limited to a maximum of 6 months.

III. *Final Offer Selection:* As one of the President's options following the eighty-day cooling-off period, the parties would be required to submit their final proposals for full resolution of the controversy. The parties would be given three days in which to submit two final offers. If any party failed to submit a final offer or offers, the last offer made during bargaining would be deemed its final offer.

As a first step following this submission, to the Secretary of Labor, the parties would be required to meet and bargain for five days with or without mediation by the Secretary.

As a second step, the parties would be given an opportunity to select a panel to act as "Final Offer Selector." If the parties were unable to select the panel,

a panel composed of three neutral members would be appointed by the President. The panel would hold hearings and determine which of the final offers constituted the final and binding resolution of the issues. In reaching its determination, the panel could not choose any settlement other than those represented by the final offers. The panel's function would be limited to choosing the more reasonable of the final offers. The bill specifies the criteria to be used by the panel in reaching its decision.

The effect of this procedure would be to encourage the parties to arrive at a settlement in negotiations. Should negotiations fail, it would insure that in the course of a dispute the parties would draw closer together rather than pull further apart. The panel's choice would become the contract between the parties.

This option has the virtue of providing finality, yet it avoids those aspects of compulsory arbitration which are inconsistent with free collective bargaining.

Title II of the Bill sets out a number of amendments to the Railway Labor Act designed to remedy what is felt to be undue reliance on governmental intervention in resolving disputes between management and labor. H.R. 3596 has two basic thrusts, the first aimed at overhauling grievance procedures, the second designed to improve procedures for negotiating new agreements.

Grievance procedures would be improved under this title by the phasing out, over a two-year period, of the National Railroad Adjustment Board and the system and regional adjustment boards currently used to resolve airline labor disputes. Instead, the parties would be encouraged to provide, in their collective bargaining agreement, for grievance machinery terminating in final and binding arbitration, together with provisions for no-strike and no-lockout clauses. Until such time as the collective bargaining agreements contain such provisions, "minor disputes" would be resolved by private arbitration with the arbitrator selected by the parties on the basis of consent or elimination of alternates until one arbitrator remains.

Negotiation of new agreements would be improved by lessening the parties' dependence on governmental intervention in major disputes. Title II changes the present notice of contract modification or termination provisions in the Railway Labor Act so as to direct the railroad and airline industries to the form of contract reopening existing in industries subject to the Taft-Hartly Act. Thus, the parties would have to serve written notice of proposed contract changes on each other at least 60 days prior to the contract expiration date. At the expiration of the contract or of 60 days, whichever is later, the parties would be free to resort to self-help.

Title II would also amend the Railway Labor Act so that the mediation duties of the National Mediation Board and its staff would be trasferred to the Federal Mediation and Conciliation Service in order to have all mediation responsibilities under one roof. The National Mediation Board would retain its function of determining theh representatives of bargaining units, but its name would be changed to the Railroad and Airline Representation Board.

These changes in the grievance and contract procedures will help avoid the delays and the deterrents to self-determination which now characterize present procedures.

Title III of the bill establishes a "Special Industries Commission" to study labor relations in those industries which the Secretary of Labor has determined to be particularly vulnerable to disputes which have an especially adverse affect on the national health, safety or welfare. The Commission would undertake a two-year study and would make recommendations to the President as to the best way to remedy the weaknesses in such industries. Section 302 specifically empowers the Commission to recommend legislation to bring other industries within the coverage of part B of Title II of the Labor Management Relations Act, as amended.

Title IV of the bill provides for a number of significant "miscellaneous" provisions. First, it would assure that collective bargaining agreements in air and rail industries would be enforceable in Federal courts. It would also make representatives suable in their capacity as such and would define the jurisdictions in which such representatives may be sued.

The Norris-La Guardia Act would be made inapplicable to any judicial proceeding brought under or to enforce the provisions of this Act. This would apply to the provisions amending the Railway Labor Act as well as the Emergency Disputes provisions.

The bill also repeals the provisions of the Railroad Unemployment Insurance Act that makes strikers eligible for benefits if the strike is not in violation of the Railway Labor Act or of the rules of the labor organization of which he is a mem-

ber. Thus, strikers in the railroad industry will be disqualified from unemployment insurance benefits in accordance with the usual criteria in State employment insurance laws applicable to other industries.

This Department strongly supports H.R. 3596 and urges its prompt enactment. For the reasons noted above, we are opposed to H.R. 3595.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report for the Committee's consideration, and that enactment of H.R. 3596 would be in accordance with the Administration's program.

Sincerely,

J. THOMAS TIDD,
Acting General Counsel.

Mr. JARMAN. Our first witness this morning is our colleague on the Transportation and Aeronautics Subcommittee and the full Interstate and Foreign Commerce Committee, Congressman James Harvey, of Michigan. Mr. Harvey.

STATEMENT OF HON. JAMES HARVEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. HARVEY. Thank you very much, Mr. Chairman. I feel very honored to come before my own committee and testify. In the years I have been in Congress, this is the first time that has happened, I might say, but I appreciate very much your scheduling me here this morning.

I would first of all like to introduce my friend who is with me, Dr. Paul R. Swan. Dr. Swan is a native of Palo Alto, Calif. He is here in Washington on the congressional fellowship program of the American Political Science Association, and he has been a great help to me, working with me and my staff on this problem that we face this morning.

I would also, Mr. Chairman, at the outset, like to ask unanimous consent that my entire statement as I have presented it here this morning be included in the record and that rather than read all of the list of 55 cosponsors, Republican and Democrat, who sponsored the several bills that I have introduced in this regard, that their names also be included in the record.

Mr. JARMAN. Without objection, it will be done.

Mr. HARVEY. Mr. Chairman, I am mindful of the committee's time. I don't wish to read my entire statement, but I would like to proceed through the first few pages of it and discuss the matter generally and then perhaps the solution I propose in that regard.

Mr. Chairman, as a member of our distinguished committee, I have long been aware of the problem now being studied at these hearings. National railroad strikes have been recurring with all too familiar regularity since I first came to Congress, almost 11 years ago. Each time, to prevent economic hardship and to protect the public welfare, Congress has enacted temporary "11th hour" solutions; today, we are seeking to develop permanent legislation—a revision of law that will preclude ad hoc legislation by future Congresses.

I believe sincerely that if Congress fails to act soon, then we who serve as Members had better "bone up" on how to run the railroads; as one of my friends said, we had better get out our caps and lanterns, because we are going to be in the railroad business. "Nationalization" used to be a dirty word. More and more thought, however, is being given to such Government action by both railway labor and manage-

ment as a result of the problems they face. I do not believe this is what our country wants or needs. I believe we in Congress have an obligation to give our free enterprise system a chance to work—and, I might add, to give our collective bargaining system a chance to work.

But these hearings are particularly timely, and the need for a permanent solution to protect the public is particularly obvious. The difference between the current, so-called selective strike by the United Transportation Union and a complete, national strike is almost impossible to discern. Since the court rulings imposed no effective limits on selective strikes, about one-fourth of the revenue ton-mile capability of the southeastern rail region and one-sixth of the eastern rail region has been struck. In the western region, the figure is now over one-third and will increase to one-half if the Atchison, Topeka & Santa Fe is struck, as threatened.

While the strike is generally accepted as a basic right of the American worker, it is clear that the "selective strike," as currently practiced, is little improvement over the national strikes which have occurred in the recent past in the railroad industry. What is needed—and what is provided in the legislation which my cosponsors and I propose today—is that the right to a selective strike be circumscribed with appropriate safeguards for the public interest. Both the burden of unlimited selective strikes and the threat of nationalization require that this Congress find a solution to rail industry disputes.

It is predictable, Mr. Chairman, that testimony before this committee will take two courses. Representatives and friends of organized labor will present arguments for unrestricted union action, such as we now are experiencing. The railroads, on the other hand, will seek legislation more favorable to their position. Clearly, we need a compromise solution, one that addresses itself to the realities of a very complex situation. It must be an equitable solution and one that is favorable to the administration, for certainly they will have the burden of enforcing it.

We need this solution quickly. At present, the Nation is confronted with a strike involving one union in the railroad industry; on October 1 of this year, the temporary legislation passed last May will expire, and I don't have to point out to you that then another union will be free to strike.

In recent years, the outcomes of such rail strikes have been fairly predictable: The threat of a complete stoppage of rail transportation forces the President to turn the matter over to the Congress. There the substantive details of the individual dispute are settled, in whole or in part, in committee and on the floor of the House and the Senate, the unions are required to resume their jobs, and the Nation's railroads again operate.

This time, however, Mr. Chairman, the circumstances are somewhat different. The Supreme Court, by refusing to overturn a district court ruling, has affirmed the right of the railroad unions to strike selectively. As we all know, since national bargaining between the union and all of the carriers has broken down and all provisions of the Railway Labor Act have been exhausted, the United Transportation Union has now elected to strike four of those carriers, threatens to strike six more this Friday, and another five on August 6. It is no longer required, however, to shut down all of the Nation's carriers simultane-

ously. The presumption here was that, since a major part of the rail transportation system would still be operating, there would be no national emergency and no need to involve the Congress in order to terminate the strike. Eventually, a settlement arrived at between the disputing parties themselves would presumably bring the selective strike to an end.

There is much to be said for this approach to settlement of rail industry labor disputes, particularly if current labor-management procedures and precedents in other industries are used as the norm and if proper safeguards are applied. It has been the advent of national bargaining and a presumption that all carriers had to be struck, together with a public antipathy to such nationwide strikes, that have led to the unique situation in which the rail industry finds itself.

Any possible remedies, such as the judicial ruling for selective strikes, which will preserve the benefits of national bargaining without inducing the national strike/congressional settlement syndrome, should by all means be given serious consideration.

I point out that the public interest, however, is still not met under the present new selective strike situation. I don't know if the members of the committee all have in front of them what I call the supplement to my statement, but I got this out late last night and early this morning. I will ask the clerk, if he will, to pass them out now. This sums up as best I can how the present strikes, the threatened ones on July 30, and threatened ones on August 6, affect the public interest.

I point out that as of July 27, the Norfolk Western in the Eastern region of the country was struck, which accounted for 16 percent of the revenue ton-miles carried.

The Southern Railway in the Southeastern region was struck, which accounted for 26 percent of the ton-miles carried; and the Union Pacific and Southern Pacific, both in the Western region, account for 30 percent of the ton-miles carried.

Now let us look forward for just a minute to July 30, and if UTU carries through with its threat at that time, these additional carriers will be added to the strike list: The Bessemer & Lake Erie, in the eastern region, would not add much, but nevertheless it would boost that cumulative percentage up to 17 percent of the load-carrying capacity that is struck. In the western region, however, the Atchison, Topeka & Santa Fe; Duluth, Missabe & Iron Range; and Elgin, Joliet & Eastern Railway would boost the percentage of revenue ton-miles or load-carrying capacity that is struck up to 43 percent.

Then, Mr. Chairman, I would ask the committee to look forward even further to August 6, a date which I am sure is in the minds of all members of the committee. It is also in the minds of all Members of Congress, because this is the date that the Speaker has scheduled for Congress to go into a recess, a much deserved recess, I would say. On this date, if the UTU carries through with its threat at that time for these additional selective strikes, then the Baltimore & Ohio Railway, Chesapeake & Ohio Railway, both in the eastern region, will be struck, and at that point the cumulated percentage of revenue/ton-miles affected will be 43 percent of the eastern region.

In the western region, Chicago, Rock Island & Pacific; Chicago, Milwaukee, St. Paul & Pacific; and Missouri-Kansas-Texas will go on strike. According to the best figures I have, if these three shut

down on August 6, then the total percentage of revenue ton-miles affected in the western region will be 55 percent, which is truly an astounding figure.

So we have this situation on August 6 if these additional lines are shut down, and if none of the other lines go back to work: That in the eastern region, 43 percent of the revenue ton-miles will be on strike; and in the southeastern region, 26 percent will be on strike; and in the western region, 55 percent will be on strike.

I believe, without question, that this goes far beyond the limits of a selective strike. Further, I am particularly glad to see my chairman here today because I wanted to say a word about the Staggers-Eckhardt bill in a few minutes, but I would point out in that bill, which by and large represents the wishes of organized labor itself, that they provide a 40-percent limit on the number of revenue ton-miles in any particular region of the country which can be struck, and in the bill that we suggest—the 55 cosponsors and myself—we provide a 20-percent limit in any particular region of the country that can be struck. The situation on August 11 will far exceed those limits of a selective strike as defined, even in the bill supported by labor.

It is pretty obvious, Mr. Chairman, that the economic impact on business and commerce, as well as the general disruption of public affairs, is such that public opinion will not long permit the administration and the Congress to stand idly by.

In addition, under present law and judicial rulings, any selective strike is very apt to escalate to a full, nationwide strike. This could occur either as a result of careful move and countermove by the carriers and union managements or uncontrollably through individual carrier lockouts or wildcat strikes as the situation deteriorates across the country.

Now, it must be admitted that the concept of public interest is one which has never been and may never be satisfactorily defined. For example, a major auto manufacturing strike such as we recently experienced—and, I might say, keenly felt in the State of Michigan—or a shutdown of the steel industry may well be fundamentally more disruptive of the country's well-being than would stopping the Nation's trains. Whether any one of these is to be considered a national emergency, however, depends on many factors, including the decisions of the Chief Executive, as well as the mood of the public.

Consequently, we can never hope to see laws written which will specify exactly to what degree a union can strike or precisely when management is justified in a lockout. It may be that someday we will, in fact, proceed beyond today's acceptance of the strike and lockouts as tools of legitimized economic warfare in the settlement of questions of working conditions.

But until that new day dawns, we need somehow to find a balance between three contending rights: That of the individual to work only under conditions acceptable to him; that of management to operate its business in an efficient and profitable manner; and that of the public to be protected from undue disruption of its affairs due to conflicts between the first two rights.

I believe that there are solutions to the problem. Certainly, the present law covering the railroad industry has not worked, as evidenced by the number of times, as our chairman mentioned in opening the

hearing here, that Congress has been required to intervene. And the recent interpretation of the right to strike selectively cannot be the final answer, since escalation to a national shutdown is highly probable, and may be occurring right now for that matter.

What is needed is twofold: first, a revision of law which will restore the incentive to the parties to undertake serious collective bargaining and to reach settlements without, each time, resorting to Congress; second, a revision of law which will enable the President, if and when negotiations nevertheless have failed, to take administrative actions until a resolution of the conflict is achieved.

With regard to this latter point, a key requirement is flexibility. Certainly, no one administrative procedure will be appropriate for all of the different situations and the wide variety of substantive issues which will arise in the future. The President must, therefore, be provided with a variety of tools with which to work. And, if these tools are in fact sufficient, he must be given the power—indeed, he must be required—to use them judiciously but inexorably until the dispute at hand is settled.

But this very flexibility, which is so necessary when finally needed, is also the key element in avoiding the need for its use in the first place. For almost every knowledgeable observer agrees that it has been the certainty of governmental action which has, in the past, contributed most to the failure of collective bargaining in the railroad industry. A situation is needed in which neither party can foresee that the Government will intervene to their potential advantage. Then, and only then, can the usual procedures of collective bargaining move forward fruitfully.

Mr. Chairman, several solutions have been proposed to remedy the present, unfortunate situation. Several distinguished Members of the House, including yourself, have proposed solutions which are contained in the various bills now before this committee.

I would like to say that I claim, as far as the bill I have introduced, no particular pride of authorship. I have not hesitated to steal what I thought were the best parts of other bills that other Members had introduced, and for that reason I would like to take a minute to look at the charts we have up here. I have included them at the end of the statement as well, just to point out what are the best and most salient points of some of the bills introduced. I have not covered all of the bills the chairman mentioned earlier, by any means.

Let us take a look first of all at the Railway Labor Act itself as we have it today. (See chart 1, p. 153.) If the labor-management bargaining conference over on the left fails to solve a dispute, the National Mediation Board comes into play and is supposed to assert its best efforts to bring about an agreement.

If the National Mediation Board fails to bring about an agreement and if the parties at that time refuse to submit the matter to arbitration, then the parties are required to wait for 30 days and we keep the status quo.

During this period of time, during this 30-day wait, the President is empowered to create an emergency board and this is instructed to report back within 30 days. Everybody on this committee, I know, has had all sorts of experience and plenty of reading material from these emergency boards, because we have had many of them.

But after the report of the emergency board is received, there is another and final 30-day period to wait; but I submit, Mr. Chairman, that beyond that point, under present law, there is nothing. The parties are free to do whatever they want—resort to a strike, resort to a lockout, whatever they want—and it is at this point in our history that we have had repeatedly the matter come by recommendation of the President to the Congress for a settlement.

Now we will flip over to the administration bill, H.R. 3596. (See chart 2, p. 154.) I want to say a word here about the bill that the administration has submitted, some of its strong points as well as what I believe are its very weak points. By all means, this bill makes the greatest changes in our present situation and in the law, because under most of the other bills, the matter is handled under the Railway Labor Act.

The administration bill would change this and would take the matter out from under the Railway Labor Act and put it under the Taft-Hartley Act, so that we start out over here with the labor-management bargaining conference and then go into Federal Mediation and Conciliation Service, similar to the Railway Labor Act, and then to a Presidential board of inquiry. Instead of making recommendations, I call to your attention that a Presidential board of inquiry, under Taft-Hartley, merely makes a finding of facts.

Then we come to what every American, I am sure, is well aware of; that is the 80-day injunction period.

Now, I think—and let me say, first of all, that the administration makes a mistake in abandoning the Railway Labor Act and going to Taft-Hartley. I say that because I think the railroads, airlines, trucklines, maritime industry, longshoremen themselves are all different and all unique and all very separate problems.

I think, from my own standpoint, that the Railway Labor Act has served us well in the course of its history. I think it has built up a very valuable case history and that the parties who use it regularly know what the language of the act means. I think we would, as a Congress, do much better to continue the Railway Labor Act, which most of the bills do. If we can find the right formula to fairly and reasonably take care of the railroads and the airlines who are covered under the Railway Labor Act, we can then readily expand that formula to the trucking and maritime and other industries covered by Taft-Hartley. I think we should start small to try to solve that problem, which is the most pressing one, first.

Let me point out in reference to the administration bill, following the initial 80-day cooling-off period, they give three basic options. They start out with the first option as partial operation of the railroads. This option would have a committee within the Government decide how much each railroad should curtail its operation. I think it is a poor solution. I think it is too bureaucratic.

More than that, I think it is a mistake to involve the Federal Government itself in the strike. I can't believe that any President in his right mind would ever select partial operation of the railroads as an alternative, particularly if he knew that if it didn't work, he would have to come back to Congress.

The final two alternatives, however, I want to say more about later, because we have adopted them in the bill we introduced. I refer to final-offer selection, and a 30-day cooling-off period.

The major limitation and major fault, I would say, Mr. Chairman, with the administration bill should be very clear to everybody on this committee. It is that the President, who is expected to solve this problem and carry it out, is limited under the bill to selecting only one option.

As I say, if partial operation does not work, he has to come back to Congress to solve the problem. If the 30-day cooling-off period does not work, he has to come back to Congress to solve the problem. The only end result he has is the final-offer selection, which is a very good one in my opinion.

Now we will turn to the Staggers-Eckhardt bill. (See chart 3, p. 154.) This is the bill, Mr. Chairman, that is supported most strongly by the railroad unions themselves. It quite simply modifies the Railway Labor Act, and the top half of the chart is the same as it was in the Railway Labor Act I just pointed out.

But I would point out that when the 30-day period following the emergency board has been exhausted, the unions are free to strike either nationally or selectively. On the one hand, this provision of law for a national strike or a selective strike would certainly prohibit either the President or Congress from intervening, and the public interest would not be adequately protected. On the other hand, the right to strike, while in accord generally with practice in other industries, needs both balance and safeguards.

H.R. 3595, while permitting strikes, effectively removes from the carriers the balancing right to institute work rule changes, as they are doing, I might say, in the present strike, or to lock out. An essential requirement in any attempt to reduce strikes in the railroad industry and encourage the peaceful settlement of disputes is that a careful balance between the parties should be fashioned.

It seems to me the main effect of this bill would be to place almost unlimited power in the hands of one party to the dispute, and, for this reason, I can't accept it. It is basically the situation we have today, and it is even stronger than that with less limits, very frankly.

I would like to say a word here about the next bill (chart 4, p. 155), and I have not included all of the bills by any means but we have taken features from each bill, and this is why I have included them. The bill that has been introduced by my colleague Jake Pickle is a very strong bill. Again, it modifies the Railway Labor Act, and I point out that the line across the top there on the chart, is pretty much the same, except when you come to the end, and then it authorizes an additional 60-day cooling-off period.

But the most important thing about Jake Pickle's bill and one of the best features of it, in my judgment, is that it permits the President to choose any option in whatever order he chooses. I strongly endorse this provision and have included it in the bill that my cosponsors and I have introduced.

Mr. Pickle gives the President these basic three options—I hope my colleagues will pardon me if I tend to oversimplify it, and I don't mean, by any reference, to leave anything out, but basically these are the three options he gives the President:

First is compulsory arbitration, and second is possession or seizure, and the third is the President to make recommendations to Congress for legislation. Now, as far as the compulsory arbitration is concerned,

I personally don't quarrel with it. It does not bother me too much, but I have a long enough memory, and I am sure the members of the committee do, so they can remember back a few years ago when we were talking about, I believe, mediation to finality, a term that was coined by the Senator from Oregon, Mr. Morse.

I can recall a debate on the House floor and the acrimony and the strong language that was used to the effect that this was compulsory arbitration. Republicans and Democrats alike would not buy a part of compulsory arbitration and didn't want it to have it foisted upon the workingman or upon management.

I say just as a realistic matter, it has been my opinion it would be difficult to get a bill with any compulsory arbitration in it. I say it to the chairman because it constitutes, I believe, much of the options of the management bill that he introduced by request. I think it would be difficult to get a bill of this nature out of this committee or out of Congress.

The second alternative is possession or seizure. There again I speak for myself as a member of the subcommittee and full committee, but I personally believe this is too drastic a remedy. It is too strong a solution to the problem, and it is too bureaucratic. Between the bureaucracy of the railroads and the bureaucracy of the Government, I can't believe that seizure is the sort of solution we ought to have.

The third alternative consists of recommendations by the President to Congress for legislation. I think this is basically what we have been going through in past years and what we have been trying to get away from. What we are trying to do is to eliminate the Congress as a factor in this matter in having to solve these particular disputes.

Now I will switch to the last bill that I want to say a word about. This is the bill I introduced and which the 55 cosponsors I mentioned have endorsed. (See chart 5, p. 155.) Again, it is under the Railway Labor Act and retains that act for the reasons I mentioned earlier.

We use railway labor procedure, as you will see, through the labor-management bargaining conference, the National Mediation Board, and appointment of a Presidential emergency board. However, we then come to a 60-day wait, or 60-day period of delay.

But then, after that point, we give the President three basic options which he can use in any sequence, except—and I point out "except"—that the first option is for selective strikes. We provide that a selective strike, with the limitations that we impose, must be permitted by the President unless it would imperil the national health and safety.

In other words, Mr. Chairman, what we are trying to do is recognize the basic right to strike on the part of any American, the right to refuse to work under any conditions under which he does not want to work; but, nevertheless, we say that this right is not unlimited. There must be some safeguards. In our bill the safeguards are essentially that the unions could strike up to two carriers in any one of the three regions I mentioned earlier—the eastern, the western, or the southeastern. They could strike up to two carriers in any one of these regions as long as the total effect was not more than 20 percent of the revenue ton-miles.

Why 20 percent in contrast to 40 percent, which is in the Staggers-Eckhardt bill? I don't know, but several months ago when working on the bill, we concluded that 20 percent, as far as selective strike was

concerned, would be a lot safer figure for a selective strike. Further, that when you got up to 40 percent or over that figure, you were getting into a national strike as well.

We didn't have the benefit at that time of the experience that we are going through today. But, through the figures that I have pointed out to you earlier, I think you can see when you get up over 20 percent of the revenue ton-miles in any region you do tread on some very dangerous ground.

I would point out that we believe that these safeguards in the bill would prevent this selective strike from escalating into a national strike. In addition, I would point out that the transport of essential materials such as I read about recently, such as coal to the electric plants, could be required by the President.

Our bill also requires that any settlement arrived at between the union and any struck carrier must be offered to all carriers who participate. The purpose of this is to avoid any tendency to "whipsaw" by gaining successively better settlements from each carrier.

The second option is the 30-day cooling-off period. This is similar to that in the administration bill. It is not just a delay but there are times. I don't have to point out to you, when the parties are close to settling, that the President might well order a 30-day cooling-off period with the hopes they will settle. If they don't, he can go on to another remedy then.

The third and final option is final-offer selection. I think, Mr. Chairman, this is a very novel idea. It is one that the administration itself recognizes has not yet been tried. But it has great promise.

We are all familiar with compulsory arbitration. What it does is drive the parties apart, because, knowing that an impartial board is going to eventually make a decision affecting both of them, the parties tend to take as radical a position as possible. Final offer selection has a wonderful advantage in that it has a reverse effect. Instead of driving them apart, it forces the parties together to get the most reasonable offer possible so their offer may be selected.

Just as in the administration bill, after the parties have done their best in bargaining, they are asked to put forward a final offer in the alternative and in secret, and a panel—either chosen by the parties or appointed by the President, will choose what is the most reasonable of all of the offers.

We think that certainly other options can be included to give the President greater flexibility, but we do think that these give him a very good arsenal to begin with.

In particular, my friends, in closing, I would like to stress the sequential aspects of this particular bill, because it would permit the President to choose among the three options until a final solution is reached. This is all important. The administration must be given power to deal with labor disputes which threaten a nation, to deal with them fairly and deal with them firmly so that Congress does not have to be involved in each individual dispute and so that the public interest will always be protected.

The legislation I sponsor embodies the three major points I just mentioned. It is contained in three separate bills, cosponsored by 55 Members. I don't have to tell you that the broad support it has gained is very gratifying and, I think, significant. I think it indicates, Mr.

Chairman, that there is a very great depth of feeling in the House, a very great concern that this problem must be solved now. Now is the time that we as Congressmen are going to be called upon to do it.

With that, I thank the chairman and committee members for their leniency in permitting me to make the statement.

(Mr. Harvey's prepared statement and attachments follow:)

STATEMENT OF HON. JAMES HARVEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, as a member of our distinguished Committee, I have long been aware of the problem now being studied at these hearings. National railroad strikes have been recurring with all-too-familiar regularity since I first came to Congress almost eleven years ago. Each time, to prevent economic hardship and to protect the public welfare, Congress has enacted temporary, eleventh-hour solutions; today, we are seeking to develop permanent legislation—a revision of law that will preclude *ad hoc* legislation by future Congresses.

I believe sincerely that if Congress fails to act soon, then we who serve as Members had better "bone up" on how to run the railroads, because this Congress and future Congresses will be in the railroad business. "Nationalization" used to be a dirty word. More and more thought, however, is being given to such Government action by both railway labor and management as a result of the problems they face. I do not believe this is what our country wants or needs. I believe we in Congress have an obligation to give our free enterprise system a chance to work.

These hearings are particularly timely, and the need for a permanent solution to protect the public is particularly obvious. The difference between the current, socalled selective strike by the United Transportation Union, and a complete national strike is almost impossible to discern. Since the court rulings imposed no effective limits on selective strikes, about one-fourth of the revenue ton-mile capability of the Southeastern rail region and one-sixth of the Eastern rail region, has been struck. In the Western region the figure is now over one-third, and will increase to one-half if the Atchison, Topeka & Santa Fe is struck, as threatened.

While the strike is generally accepted as a basic right of the American worker, it is clear that the "selective strike," as currently practiced, is little improvement over the national strikes which have occurred in the recent past in the railroad industry. What is needed—and what is provided in the legislation which my cosponsors and I propose today—is that the right to a selective strike be circumscribed with appropriate safeguards for the public interest. Both the burden of unlimited selective strikes, and the threat of nationalization require that this Congress find a solution to rail industry disputes.

It is predictable that testimony before this Committee will take two courses. Representatives and friends of organized labor will present arguments for unrestricted union action, such as we now are experiencing. The railroads, on the other hand, will seek legislation more favorable to their position. Clearly, we need a compromise solution, one that addresses itself to the realities of a very complex situation. It must be an equitable solution and one that is favorable to the Administration, for they will have the burden of enforcing it.

We need this solution quickly. At present, the nation is confronted with a strike involving one union in the railroad industry; on October 1st of this year, the temporary legislation passed last May will expire and another union will be free to strike.

In recent years, the outcomes of such rail strikes have been fairly predictable: The threat of a complete stoppage of rail transportation forces the President to turn the matter over to the Congress. There the substantive details of the individual dispute are settled, in whole or in part, in committee and on the Floor of the House and the Senate, the unions are required to resume their jobs, and the nation's railroads again operate.

This time, however, the circumstances are somewhat different. The Supreme Court, by refusing to overturn a district court ruling, has affirmed the right of the railroad unions to strike selectively. As we all know, since national bargaining between the union and all of the carriers has broken down, and all provisions of the Railway Labor Act have been exhausted, the United Transportation Union has now elected to strike four of those carriers, threatens to strike

six more this Friday, and another five on August 6th. It is no longer required, however, to shut down all of the nation's carriers simultaneously. The presumption here was that, since a major part of the rail transportation system would still be operating, there would be no national emergency and no need to involve the Congress in order to terminate the strike. Eventually, a settlement arrived at between the disputing parties themselves would presumably bring the selective strike to an end.

There is much to be said for this approach to settlement of rail industry labor disputes, particularly if current labor-management procedures and precedents in other industries are used as the norm, and if proper safeguards are applied. It has been the advent of national bargaining and a presumption that all carriers had to be struck, together with a public antipathy to such nationwide strikes, that have led to the unique situation in which the rail industry finds itself. Any possible remedies, such as the judicial ruling for selective strikes, which will preserve the benefits of national bargaining without inducing the national strike/Congressional settlement syndrome, should by all means be given serious consideration.

The public interest, however, is still not met under the present new selective strike situation. That is, the resulting economic impact on business and commerce, as well as the general disruption of public affairs, is such that public opinion will not long permit the Administration and the Congress to stand idly by. In addition, under present law and judicial rulings, any selective strike is very apt to escalate to a full, nationwide strike. This could occur either as a result of careful move and counter-move by the carriers and union managements, or uncontrollably through individual carrier lockouts or wildcat strikes as the situation deteriorates across the country.

Now it must be admitted that the concept of public interest is one which has never been, and may never be, satisfactorily defined. For example, a major auto manufacturing strike such as we recently experienced, or a shutdown of the steel industry, may well be fundamentally more disruptive of the country's well being than would stopping the nation's trains. Whether any one of these is to be considered a national emergency, however, depends on many factors, including the decisions of the Chief Executive, as well as the mood of the public.

Consequently, we can never hope to see laws written which will specify exactly to what degree a union can strike, or precisely when management is justified in a lockout. It may be that some day we will, in fact, proceed beyond today's acceptance of the strike and lockouts as tools of legitimized economic warfare in the settlement of questions of working conditions. But until that new day dawns, we need somehow to find a balance between three contending rights: That of the individual to work only under conditions acceptable to him, that of management to operate its business in an efficient and profitable manner, and that of the public to be protected from undue disruption of its affairs due to conflicts between the first two rights.

I believe that there are solutions to the problem. Certainly the present law covering the railroad industry has not worked, as evidenced by the number of times the Congress has been required to intervene. And the recent interpretation of the right to strike selectively cannot be the final answer, since escalation to a national shutdown is highly probable, and may be occurring right now. What is needed is twofold. First, a revision of law which will restore the incentive to the parties to undertake serious collective bargaining and to reach settlements without, each time, resorting to Congress. Second, a revision of law which will enable the President, if and when negotiations nevertheless have failed, to take administrative actions until a resolution of the conflict is achieved.

With regard to this latter point, a key requirement is flexibility. Certainly, no one administrative procedure will be appropriate for all of the different situations and the wide variety of substantive issues which will arise in the future. The President must, therefore, be provided with a variety of tools with which to work. And, if these tools are in fact sufficient, he must be given the power—indeed, he must be required—to use them judiciously but inexorably until the dispute at hand is settled.

But this very flexibility, which is so necessary when finally needed, is also the key element in avoiding the need for its use in the first place. For almost every knowledgeable observer agrees that it has been the *certainty* of governmental action which has, in the past, contributed most to the failure of collective bargaining in the railroad industry. A situation is needed in which

neither party can foresee that the Government will intervene to their potential advantage. Then, and only then, can the usual procedures of collective bargaining move forward fruitfully.

What solutions have been proposed to remedy the present, unfortunate situation? Several distinguished Members of the House have proposed solutions which are contained in the various bills now before this Committee. Since the bill which I and my cosponsors introduced adopts many of the best points of these various bills, I would like to take a few moments to describe and compare their various approaches.

Let me illustrate with the first chart how the Railway Labor Act functions with regard to major disputes concerning changes in pay, rules, or working conditions. If the labor-management bargaining conference fails to solve a dispute, the National Mediation Board is required to use its best efforts to bring them to agreement. If it fails, and if either party then refuses to submit the dispute to arbitration, the parties are then required to retain the *status quo* for a period of thirty days.

During this period, the President may create an Emergency Board to investigate and report within an additional thirty days. After the report, a third waiting period of thirty days is provided, after which the parties are free to resort to "self-help." That is, the carriers can institute changes unilaterally, and the unions can strike, either nationally or, now, selectively.

Among the various measures before the Committee, the one which will most drastically affect not only the major dispute provisions, but also the entire Railway Labor Act, is the Administration bill, H.R. 3596. This bill would transfer rail and air labor relations bodily from RLA to the Taft-Hartley Act. Then it would add new provisions to Taft-Hartley to cover major disputes in the entire transportation industry. This approach is somewhat over reactive, in my view. There are many useful provisions which have evolved over the years under RLA, and they probably should not be scuttled wholesale. In addition, I believe the record shows that the maritime, longshore and trucking industry problems are all unique—and surely are all different from those of rail and air—and should not be linked together in new legislation.

The major provisions of the Administration bill are outlined on the second chart, where three presidential options are shown. The first option, Partial Operations, would have a committee decide now much each railroad should curtail operations to simulate the pressures of a strike. The approach is bureaucratic in the extreme, and would have the effect of having the Federal Government involve itself in the details of a pseudo-strike, hardly a situation to encourage collective bargaining settlements.

The other two options provided in the Administration bill are very promising, and I will defer speaking to them until later. A major limitation to the bill, however, is contained in the provision that only *one* of the options can be selected by the President in any dispute. If that selection fails to achieve a settlement, there would be no recourse but to send the dispute back to Congress. This flaw is so major that I cannot emphasize too strongly how this provision undermines the whole idea of improving the present law. If we want to encourage collective bargaining and remove the Congress from the role of arbitrator, the President must be free to find solutions within the administrative process.

The bill supported most strongly by the railroad unions, H.R. 3595, is outlined on the third chart. It quite simply modifies RLA by providing that, when all other provisions have been exhausted, the unions are free to strike either nationally or selectively. On the one hand, provision in law for a national strike would prohibit either the President or Congress from intervening, and the public interest would seem not to be adequately protected. On the other hand, the right to strike, while in accord generally with practice in other industries, needs both balance and safeguards. H.R. 3595, while permitting strikes, effectively removes from the carriers the balancing right to institute work rule changes (as they are doing in the present strike) or to lock out.

An essential requirement in any attempt to reduce strife in the railroad industry, and to encourage the peaceful settlement of disputes, is that a careful balance between the parties should be fashioned. The main effect of this bill would be to place almost unlimited power in the hands of one party to the dispute. For this reason, although I accept the strike as an inherent right, I cannot support the bill as it is written.

A third bill before the Committee, H.R. 2357, is that introduced by Congressman Pickle. This bill is a strong one in that it enables the President to choose sequen-

tially from among several options until the dispute is settled. I strongly endorse this provision, and I have adopted it in my own bill. The options in H.R. 2357 are shown on the fourth chart, and include government seizure and operation of struck railroads, as well as compulsory arbitration. While I have no quarrel with compulsory arbitration in principle, I am aware of the strong feelings on the subject in the rail industry. Seizure, on the other hand, I feel is too drastic a measure, and I trust that the Committee can fashion a bill which will achieve all of our objectives without requiring such an extreme provision. Unfortunately, this bill makes explicit provision for turning disputes over to the Congress, and I feel that, if such an option is included, *all* future disputes will end up that way.

Another bill pending before this Committee is H.R. 5347, introduced by Mr. Dingell. This bill would amend the RLA to permit the President to create a special board to assist in the resolution of disputes. Once established, this board could require the carriers to make a final offer of settlement, which would then be offered to the employees. If a majority of the employees accepted this offer, it would become final and binding; if rejected, the unions could then make a counteroffer, which the carriers could accept or reject. At the end of 60 days, if no settlement had been reached, the President would be authorized to direct any carrier or carriers into operation to protect the public health and safety. In short, Mr. Dingell has combined a modified form of final offer selection with a modified version of seizure in an effort to resolve the dispute.

Now, I would like to mention the major provisions of the bill my cosponsors and I have introduced. As I have suggested earlier, I believe RLA should be retained as enabling legislation, and I have added three options for Presidential action as shown on my last chart.

First, I would suggest that selective strikes be permitted by the President unless he finds, in a particular instance, that they would cause immediate imperilment of the national health and safety. However, this option must be circumscribed with appropriate safeguards to insure that the resulting shutdown of transportation does not immediately result in, nor escalate to, a situation which the public refuses to countenance.

In particular, our bill would require that any settlement arrived at between the union and any struck carrier must be offered, intact, to all of the other carriers who had participated in the national bargaining. This will help avoid any tendency to "whipsaw" by gaining successively better settlements from each carrier, in turn. In addition, the limitations on the selective strike are more firmly drawn, so that no more than 20% of the nation's rail service would be affected at any one time, regardless of the number of simultaneous disputes.

As a second option, I would, of course, permit the President to call for additional time at the bargaining table. Many instances will arise where the vagaries of calendars and of argument will require only more time to resolve.

Third, I would adopt the novel suggestion put forward by the Administration under the title of Final Offer Selection. This process, not yet tried anywhere to my knowledge, holds the promise of eliminating the divisiveness of compulsory arbitration while providing an extremely strong impetus to collective bargaining, and an assurance to the public that a final resolution of the dispute will be achieved. What this proposal provides is that, after the parties have bargained to their best ability, each puts forward a final offer which constitutes a complete and binding agreement. Then one and only one of these offers will be selected, complete and intact, by a board composed of public members. The essence of this procedure is that each party is induced, first to resolve as many issues as possible during bargaining, and, second, to make the most reasonable possible final bid on all outstanding issues. For the selection board, which is charged with the public interest, will select that final offer they find to be most reasonable in view of the facts of the situation.

In addition, I imagine that there are other options which might be given to the President to increase the flexibility of his response. In particular, I would like to stress the sequential aspects of my bill, which would permit the President to choose from among the three options until a solution is reached. As I mentioned earlier, the Administration's bill, on the other hand, permits the President one and only one option. However, the important point is that the Administration must be given the power to deal with labor disputes which threaten the nation, to deal with them fairly, and firmly, so that Congress does

not have to be involved in each individual dispute, and so that the public interest will be protected.

The legislation that I have sponsored embodies the three major points that I have just mentioned. Since May 13, 1971, when I first introduced my proposal as H. R. 8385, I have received bipartisan support of 54 of my colleagues in the House. My bill has been reintroduced with minor technical modifications on June 14th as H. R. 9088 and H. R. 9089, on July 1st as H. R. 9571 and on July 15th as H. R. 9820.

The broad support that my proposal has gained is both personally gratifying and significant, for it indicates the depth of feeling that exists in the House for permanent rail strike legislation. Naturally, I am very pleased that our House Committee on Interstate and Foreign Commerce has initiated hearings on this important subject. I look forward to the emergence of sound and equitable legislation that will serve the interests of all the people.

RAILWAY-LABOR ACT

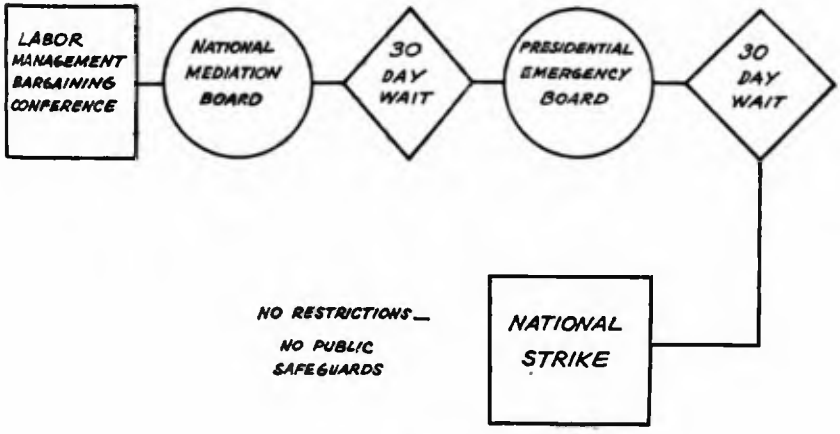

CHART 1

ADMINISTRATION BILL

H.R. 3596

APPLIES TO ALL TRANSPORTATION INDUSTRIES

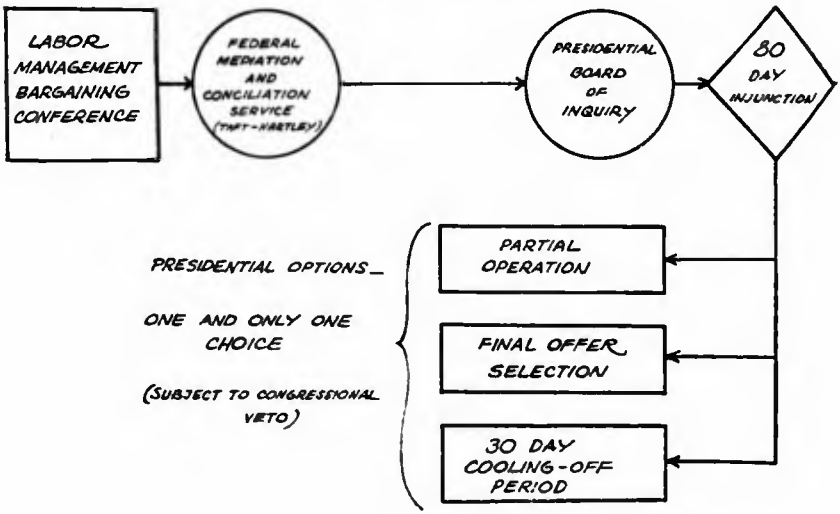

CHART 2

STAGGERS-ECKHARDT BILL

H.R. 3595

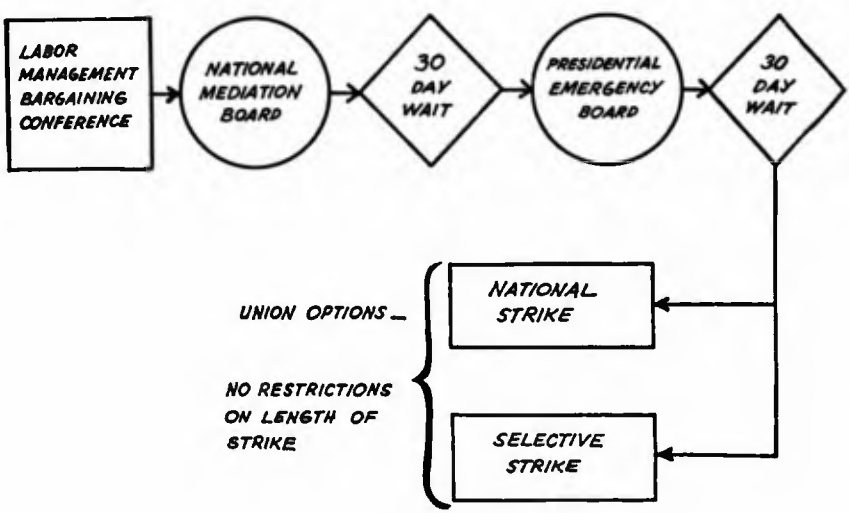

CHART 3

PICKLE BILL
H.R. 2357

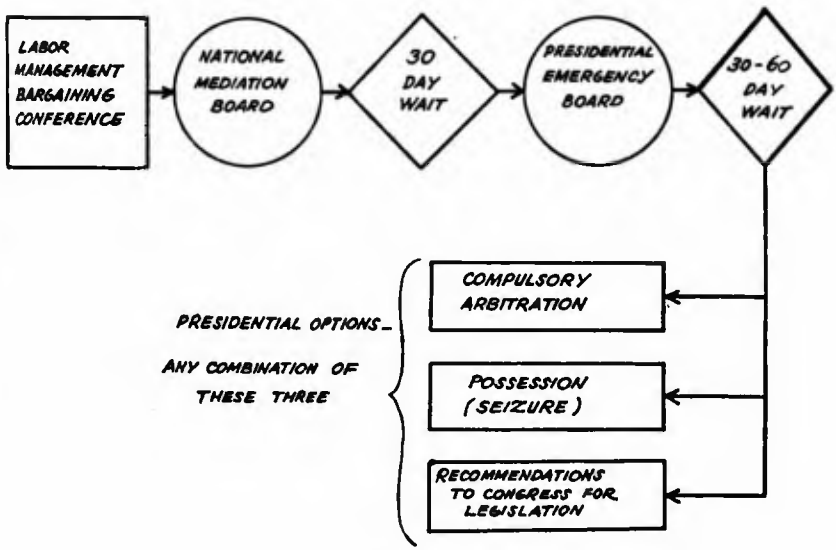

CHART 4

HARVEY BILL
H.R. 9088

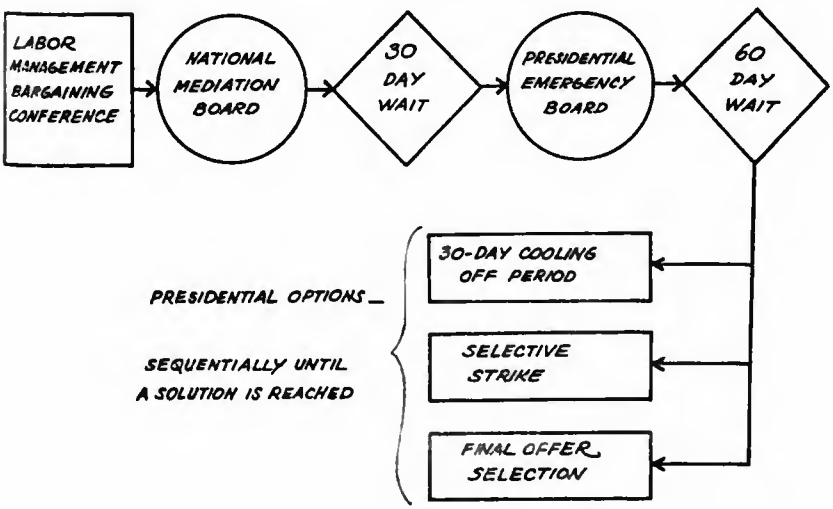

CHART 5

COSPONSORS OF EMERGENCY STRIKE LEGISLATION

(H.R. 8385, H.R. 9088, H.R. 9089, H.R. 9571 and H.R. 9820)

1. John B. Anderson (Ill.)
2. Garry Brown (Mich.)
3. James T. Broyhill (N.C.)
4. J. Herbert Burke (Fla.)
5. Elford A. Cederberg (Mich.)
6. Charles E. Chamberlain (Mich.)
7. Harold R. Collier (Ill.)
8. Barber B. Conable, Jr. (N.Y.)
9. R. Lawrence Coughlin (Penn.)
10. John Dellenbach (Ore.)
11. Edward J. Derwinski (Ill.)
12. Samuel L. Devine (Ohio)
13. John N. Erlenborn (Ill.)
14. Joe L. Evins (Tenn.)
15. Peter H. B. Frelinghuysen (N.J.)
16. Bill Frenzel (Minn.)
17. Louis Frey, Jr. (Fla.)
18. James R. Grover, Jr. (N.Y.)
19. Tom S. Gettys (S.C.)
20. Gilbert Gude (Md.)
21. Seymour Halpern (N.Y.)
22. Michael Harrington (Mass.)
23. James Harvey (Mich.)
24. Craig Hosmer (Calif.)
25. Edward Hutchinson (Mich.)
26. William J. Keating (Ohio)
27. Hastings Keith (Mass.)
28. Norman F. Lent (N.Y.)
29. Sherman P. Lloyd (Utah)
30. Delbert L. Latta (Ohio)
31. Robert McClory (Ill.)
32. Paul N. McCloskey (Calif.)
33. John Y. McCollister (Nebr.)
34. Jack H. McDonald (Mich.)
35. James D. McKevitt (Colo.)
36. F. Bradford Morse (Mass.)
37. Charles A. Mosher (Ohio)
38. Thomas M. Rees (Calif.)
39. J. Kenneth Robinson (Va.)
40. Howard W. Robison (N.Y.)
41. Edward R. Roybal (Calif.)
42. Herman T. Schneebeli (Penna.)
43. Fred Schwengel (Iowa)
44. Keith G. Sebelius (Kan.)
45. Garner E. Shriver (Kan.)
46. Robert T. Stafford (Vt.)
47. William A. Steiger (Wisc.)
48. J. William Stanton (Ohio)
49. Charles Thone (Nebr.)
50. Guy Vander Jagt (Mich.)
51. Victor V. Veysey (Calif.)
52. G. William Whitehurst (Va.)
53. Lawrence G. Williams (Penn.)
54. Bob Wilson (Calif.)
55. Clement J. Zablocki (Wisc.)

CURRENT AND FUTURE EFFECTS ON UNITED TRANSPORTATION UNION STRIKES AGAINST RAILROADS

When Congress closes on August 6th for its summer recess, at the same time it is probable, according to the present "timetable" issued by the United Transportation Union, that practically half of our nation's rail service will be in limbo, too.

Just consider the following information and facts. The United States is divided into three railroad regions—Eastern, Southeastern, and Western—and, as set forth in H.R. 9088 and H.R. 3595, this means respectively the carriers represented in the Eastern, Southeastern and Western Conference Committee.

Those carriers currently under strike, their region and the approximate percents of the revenue ton miles in that region they carry as follows:

As of July 27th:

Ton-Miles Carried

Carrier and region:	*Percent*
Norfolk Western—Eastern	16
Southern Railway—Southeastern	26
Union Pacific—Western	30
Southern Pacific—Western	30

Again, on July 30th, these additional carriers will be added to the "strike list":

Accumulative Ton-Miles Carried

Carrier and region:	*Percent*
Bessemer & Lake Erie—Eastern	17
Atchison, Topeka & Santa Fe—Western	43
Duluth, Missabe & Iron Range—Western	43
Elgin, Joliet & Eastern Railway—Western	43

Then, on August 6th, five additional carriers will be struck—as Congress is is scheduled to commence its summer recess—to bring the accumulative % of ton miles carried to the following:

Accumulative Ton-Miles Carried

Carrier and region:	Percent
Baltimore & Ohio—Eastern	43
Chesapeake & Ohio—Eastern	43
Chicago, Rock Island, and Pacific—Western, Chicago, Milwaukee, St. Paul & Pacific—Western, Missouri, Kansas, and Texas—Western	55

Thus, on August 6th, the following situation by a regional basis would exist:

Accumulative Ton-Miles Carried

Region and number of carriers:	Percent
Eastern—4 carriers	43
Southeastern—1 carrier	26
Western—8 carriers	55

It should be noted that if the U.T.U. carries through with its announced plans to strike the above mentioned lines simultaneously, the effect on the revenue ton miles carried will far exceed labor's own definition of selective strike as contained in H.R. 3596, where the aggregate is limited to 40% of the revenue ton miles in any region.

Needless to say, the effect on revenue ton miles, as now announced by the U.T.U. by August 6th, not only is far greater than would be permitted under H.R. 9088—the Harvey bill—but far exceeds reasonable definition and acceptance of selective strike guidelines. In essence, we would have the adverse effects of a nationwide strike on our hands.

Mr. JARMAN. I thank our colleague for his very comprehensive, excellent presentation on this tremendously important subject. We have all known of his work over the months developing a legislative approach to meeting this national problem, and I think the work he has done and is doing will be of tremendous value to the subcommittee and full committee in trying to come out with a bill that helps establish a legislative solution to this problem. Mr. Podell.

Mr. PODELL. Thank you Mr. Chairman. I would just like to congratulate the gentleman on a very fine and erudite statement, even though I do not agree with everything you have said.

One thing puzzles me, if I may speak to it for a moment. After all of the negotiations we will have a cooling off period and finally we come to the end of our cooling off period. We must come to a decision which seems to be basic. That decision is whether or not we ought to permit labor and management to decide their own settlement or whether we will decide for them.

I don't think that answer is covered in your proposal. When everything else has been tried, you seem to take the position that the Government will step in. There comes a point when Government does dictate the final solution; isn't that true?

Mr. HARVEY. Mr. Podell, I think every Member of Congress realizes that a national strike today is unacceptable. It would be a disaster to the country. We have had one Secretary of Labor after another and one Secretary of Defense after another tell us that and that it could not be accepted.

You are right; at one point. Because of the enormity of what is going on when it is clearly recognized that the parties cannot reach agreement, then obviously agreement must be patterned for them. The question then becomes: How do we give the administration the tools to pattern that agreement?

I think we clearly do it on the one hand either by compulsory arbitration as management would apparently like to have us as reflected in their bill. Or we do it in a fashion that the administration has said,

by final-offer selection. Final-offer selection does not have quite the harshness of compulsory arbitration. I believe strongly that there is this incentive in final-offer selection for the parties to get as close together as possible in their offers and present what is the most reasonable figure.

There is not that incentive in compulsory arbitration. The incentive is just the reverse; it is to get as far away from the center as possible because eventually a board is going to have to make a decision and they know they are going to divide it in half and at that point they want the largest half.

Mr. PODELL. It appears to me the only distinction between final-offer acceptance and compulsory arbitration—and perhaps I am wrong—is that when we deal with compulsory arbitration we start at opposite ends of the spectrum and look to meeting at a certain point.

The only difference is: Final-offer selection would just bring us to that point almost immediately and save the necessity of discussing the various radical ends of thinking first. I find it difficult to distinguish between the two except that one is a much shorter process and you are telling the people, "This is what it is," and so on.

If I were management under conditions outlined in your bill, I would take a vacation until the final day of reckoning comes about, because, in effect, what we are doing is just prolonging a day of reckoning and saying, "Don't worry; you have the cards. Eventually you will be able to play them."

I think that this concept takes away the one strong thing which our labor movement is based on, and that is the right of collective bargaining until a determination is made between the parties. Any attempt to curtail the one single tool that labor has would frustrate the entire collective-bargaining position.

Mr. HARVEY. I think you and I are in agreement on the fact we both want collective bargaining to work as well as possible. I think we are in disagreement because I think the final-offer selection program, when finally called in being, would be a better tool than compulsory arbitration to make the final decision.

Mr. PODELL. I have always felt that if I had to settle a dispute, I would take labor and management and put them in a sealed room, and not serve anything to eat or drink until they come up with a solution, and the one that gets hungry first would come up with the final position.

I cite that even though I want to truly congratulate you on a very fine job, somehow I just can't be persuaded that this position of final-offer selection is anything other than compulsory arbitration.

Mr. HARVEY. Well, I thank the gentleman for his kind words.

Mr. JARMAN. Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman. And, Mr. Harvey, I would like to commend you for the outstanding leadership you have demonstrated in the overall problem. I happen to be probably less than objective in this matter, because I think I am No. 9 of your 55 sponsors of your H.R. 9908, but I know how much time and dedication you supplied to the overall problems and I think about the frustrations you and I and the rest of the members of the committee endured—in your case 11 years, and my case 13 years—every time there is a labor-management dispute in the industry, all of them come to

Congress, hat in hand, of course, asking Congress to solve their problems, and I know I, for one, and you, too, are fed up to here in resolving their differences.

We are just giving lipservice to the collective-bargaining process and everybody is afraid and runs away from the enigma of compulsory arbitration; I think the two parties involved, railroads and labor, have driven us to the point we must enact legislation to take the burden off of our backs. It comes up every 6 months or every year and you and I on this committee have gone through it too many times.

I think this solution you offered, together with the others by Mr. Pickle and our chairman, Mr. Staggers, are going in the direction they promised to go several years ago if we had hearings in the area, and I think you have a deep knowledge and depth in the overall problem, and I think we can come up with a solution if we remain realistic. And again I commend you for your leadership.

Mr. HARVEY. I thank my colleague from Ohio very much, and I would like to say that the fact that this is such a pressing problem is best demonstrated by the fact that our 55 cosponsors are bipartisan. They are not all Republicans or Democrats, but it is recognized on both sides of the aisle it is a pressing problem indeed.

When we started out considering the matter, we did not start out with the management or labor approach but truly tried to find a compromise. Perhaps we will have ample time in the hearings to find a better compromise. I don't know. But this is the best we could come up with.

Mr. DEVINE. I hope your people in Michigan appreciate the difficult position it puts you in. I recognize Michigan is generally known as a labor-oriented State, and I believe that is why you point out this has a bipartisan approach, that you have taken the bull by the horns, so to speak, and demonstrated the leadership that is necessary to get something through, and I commend you.

Mr. HARVEY. I thank you very much.

Mr. JARMAN. Mr. Metcalfe.

Mr. METCALFE. Thank you, Mr. Chairman. I, too, would like to share in the accolades extended to you, Congressman Harvey, for your complete and exhaustive presentation here, and also for your intelligent thought as to what the future is going to hold.

Referring to your figures, your percentage figures on the ton-miles carried, roughly, the average as of July 27, approximately 26 percent; for the period of July 30, it is about 20 percent; and then for the period of August 6, it is up to 33 percent; and then again on August 6, the last figures you cited with the eastern four carriers, southeastern one carrier, and western eight carriers, it is about 41 percent.

Now, these are realistic figures and they are based on the selective strike, but I am wondering this: How could this be effective if, for instance, these unions went back to work? Have you projected that, or is this on the basis that they are going to strike?

Mr. HARVEY. I thought I had qualified that, Mr. Metcalfe, in my statement, but perhaps I neglected to do it because I was not reading from any text at the time. No. 1, these figures in my supplement are taken from the 1969 revenue ton-miles carried by these carriers. The 1970 figures are not yet available to us, and we have tried desperately to get them.

No. 2, we have to assume from the standpoint of making a projection, that all of the unions are going to continue to stay out. It is entirely possible that the UTU might order some of the unions to go back. This, of course, I do not know. If they ordered them to go back, the consequences or effect on the national health and safety would be less, obviously.

Mr. METCALFE. May I ask somewhat of a leading question? Then is it your thought—and I concur with the necessity for coming up with new legislation so as to prevent these segmented strikes—that this may be a deterrent? I mean these figures, and they are proceeding because you are assuming these are the figures we are going to be confronted with in the future if the trend continues?

Mr. HARVEY. I think it is absolutely essential that we come up with legislation.

Mr. METCALFE. I know that. I concur with that, but would this be somewhat of a deterrent in helping to bring about the cessation of these strikes?

Mr. HARVEY. I am not sure I understand, Mr. Metcalfe.

Mr. METCALFE. What I am concerned about is, as a result of the testimony and possibility of passage of these bills that are before us, will unions then be encouraged not to strike in order to protect themselves, or will substantially these substantiate these projections of yours and proceed to strike and, therefore, the legislation would be stronger than it would otherwise not be?

Mr. HARVEY. We think what we are doing in this bill is preserving the right to strike to the workingman and to the union that might not otherwise be preserved, because obviously we preserve it by keeping the limits or the safeguard on the strike to such an extent it is tolerable to the Nation.

Obviously, when it gets carried to the point where it may well be—and I am not saying it will be, but it may well be by August 6 of this year—then it is getting to the point of being intolerable to the Nation, and the President and Congress would have to act.

Mr. METCALFE. I don't question that at all but, as a matter of fact, I concur with you. But my major concern is the thought in the minds of the unions as well as the railroad people as to whether or not there will be the continuation of the frequency of the strikes that we have been having. It looks as though we are going to have them in the future, I think.

Mr. HARVEY. I would hope, if the legislation we introduced would be passed, that every labor union connected with the railroads and the airlines would recognize that the administration then had the tools with which to handle any particular strike. They would realize they had the basic right to strike if they could keep it within limits and reach an agreement. But if the strikes exceeded these limits and went beyond it, then the President had the tools to end the strike.

I don't know, Mr. Metcalfe, whether it would encourage the unions to use the strike as a weapon more often or not to use it. I think the fact the President had the ultimate tools to end the strike would, by and large, bring about a greater degree of collective bargaining than we would otherwise have.

Mr. METCALFE. I don't want to belabor this, but, of course, we prefer not to have them strike, I mean not to tie up the economy of our

country. I just was concerned about whether or not this would be an incentive for them to go back to work or not to strike. This is my own thrust of the question, perhaps, I think, you have answered it. I think you have answered it by the legislation.

Mr. HARVEY. I thank my friend from Illinois.

Mr. JARMAN. Mr. Skubitz.

Mr. SKUBITZ. Thank you, Mr. Chairman. I, too, congratulate the gentleman from Michigan for the job he has done on this particular piece of legislation. There are a few questions I would like to ask Mr. Harvey. On page 3 of your bill reference is made to a board to investigate and report. During the 60-day period provided in 10.1, the President may, at his discretion, provide a board to investigate and report on such dispute. Line 14 of the bill says: "No member of the board shall be pecuniarily or otherwise interested in any organization of employers or carriers." Would you tell us, please, what you mean by "otherwise"?

Mr. HARVEY. Mr. Skubitz, this is the identical language as in the Presidential bill and as presently in the Railroad Labor Act with regard to creation of a Presidential Emergency Board. I don't claim to be an expert in this field as a lawyer, so I think I would beg out of answering that question of yours.

In other words, at this point, in the creation of the Board you are talking about, we are still under the Railway Labor Act and using its language.

Mr. SKUBITZ. I am not an expert on the RLA, but I am wondering whether in the selection of the proposed Board under the act, labor and management have the right to propose a member from each and should one represent the public?

Mr. HARVEY. I think I know, but I would prefer not to comment on it, because it is in an area of expertise of those who practice under the Railway Labor Act. This is one of the provisions we have taken from it and put it in the bill and not changed in any fashion whatsoever.

Mr. SKUBITZ. My point here is this: The bill speaks of "three that are otherwise," and presumably refers to three or four members who would represent the public; labor and management could not have representation at all on such a board, I presume? That is the point I am thinking about here.

Also, I am interested in knowing why the bill is limited solely to railroad disputes or to transportation disputes. Why not to all labor disputes?

Mr. HARVEY. Well, at the outset, I stated that I thought the unions were different—the railroads, the airlines, the longshoremen, the trucking industry, and so forth; they each have their separate unions and each have their separate practices, and it is just my thought if you start small and can settle it in the one area here particularly and if we can find the right formula, we will have no difficulty at that point in spreading it to other industries.

But I do think we ought to try to settle the railroad problem, which has been with us so many times, as the chairman mentioned, over the years. I guess that is the best reason I can give, my friend.

Mr. SKUBITZ. Thank you. Now, turning to the proposal for a final-offer selection. As I understand the testimony, each side would make a final offer?

Mr. HARVEY. That is correct. Actually, it is two offers, and each side is given an opportunity to present an offer and one in the alternative as well, and they do this in secret.

Mr. SKUBITZ. Many brotherhoods are involved in such disputes. In each such dispute between a brotherhood and carrier, could each brotherhood submit its separate proposal in the settlement of its dispute?

Mr. HARVEY. That is correct. We forget that, despite all of the selective strikes we have here today, we are talking about only one union, and when you involve more unions, you talk about more final offers of selection.

Mr. SKUBITZ. We could, however, have other final offers made by different unions within the transportation industry, could we not?

Mr. HARVEY. That is correct. Each union deals with the carrier separately.

Mr. SKUBITZ. In the submission of that final offer, does the Government or Board or whoever is to make the determination have the right to make a compromise between the offers or must they accept one or the other of the final offers?

Mr. HARVEY. They must accept one or the other—that is, what appears to be the most reasonable offer. They do not have the right to compromise it or change the words.

Mr. SKUBITZ. In other words, the bargaining is over at that point?

Mr. HARVEY. That is correct. That is why I say there is incentive at that point to make the most reasonable offer on both sides so that it will be accepted.

Mr. SKUBITZ. Your bill allows selective strikes, as I understand, two in each area, each region.

Mr. HARVEY. Not more than two in each region of the country.

Mr. SKUBITZ. Such strikes shall not involve over 20 percent of the ton-miles?

Mr. HARVEY. Not to exceed over 20 percent, that is correct.

Mr. SKUBITZ. Suppose, in a particular area, that material is being hauled that is vitally essential to the national welfare or interest in some way but it totals only 18 percent. What would be the effect of the legislation in that instance?

Mr. HARVEY. I thought I stated it, but perhaps I didn't. Before any selective strike could be carried out, it would require an affirmative finding by the President that it would not imperil the national health and safety. So, obviously, a strike of even 5, 10, or 15 percent could conceivably imperil health and safety and would be one that could not be tolerated, but the President has the final say here.

Mr. SKUBITZ. Mr. Harvey, your comparative study with the other bills is interesting. It seems to me in all other proposals that have been placed before us, the monkey is placed on the President's back to make the decision. Thus, we as Members of Congress can always duck our responsibility of taking a position by saying, "Well, we turned it over to the President and he made the mistake; we didn't expect him to do it that way."

I have a feeling if we are going to do something in this field, that we, as Members of Congress, should be willing to stand up and be counted and not try to put all of the decisionmaking powers on the President. I know it is always nice to say, "Give the President flexibility." But it is an excellent way to get out of meeting our responsibilities.

Mr. HARVEY. I thank my friend from Kansas for his remarks.
Mr. SKUBITZ. Thank you. That is all, Mr. Chairman.
Mr. JARMAN. Mr. Pickle.
Mr. PICKLE. No questions.
Mr. JARMAN. Mr. Broyhill.
Mr. BROYHILL. No questions.
Mr. JARMAN. Again our thanks for starting this important hearing in such an able, comprehensive fashion.
Mr. HARVEY. I thank the chairman for his leniency with regard to time, and my colleagues, for this opportunity to appear before them.
Mr. JARMAN. Our next witness this morning is our colleague on the full committee, Congressman J. J. Pickle of Texas.
Mr. SKUBITZ. Mr. Chairman.
Mr. JARMAN. Mr. Skubitz.
Mr. SKUBITZ. I am wondering if Mr. Harvey would leave his charts so that we can ask Mr. Pickle some questions about the charts. I think it would be easier for us to understand the testimony.
Mr. JARMAN. I think it would be helpful. I would say, before Mr. Pickle begins his testimony, that for some years he has been a very active and effective member of this Transportation and Aeronautics Subcommittee and it is good to have him before the committee this morning.

STATEMENT OF HON. J. J. PICKLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS; ACCOMPANIED BY DAVE RICHESON, LEGISLATIVE ASSISTANT

Mr. PICKLE. I thank you, Mr. Chairman, and I appreciate the opportunity to appear before this, my subcommittee for some 6 years, and to comment on this very vexing problem that faces the Congress and the American public.
I want to compliment the chairman of this committee and the full committee for setting these hearings. I prophesy this will be a lengthy and a very difficult area to explore and we need not indulge ourselves that this will be an easy or quick solution. I think we all recognize that. It must be faced.
As you know, and as you stated, I have been requesting for several years the hearings that are starting today to consider legislation regulating management-labor disputes in the transportation industry. For 6 years, I have authored legislation that offered new approaches for settlement. For the last week, every time I read my morning mail, I get several reminders of the fact that collective bargaining is not working in the railroad industry. These letters I speak of are from shippers who are paralyzed by the lack of rail service.
We are all resolved that the Railway Labor Act must be made to work better. There is a growing consensus that it needs an overhaul. I have to agree with a Department of Labor official who calls the present Railway Labor Act "an incredibly convoluted procedure." He went on to compare this act with a Rube Goldberg device. The only difference is, a Rube Goldberg machine always worked in the end. Unfortunately, the Railway Act keeps on breaking down.
This 1926 act has been invoked 100 times since World War II, nine times since 1963. Congress has had to step in after the cooling-off

machinery of the act has expired and failed to produce a settlement.

In 1966, Congress was in the process of ordering striking machinists back to work in a dispute with the union and five major airlines when the parties reached a settlement ending a 42-day-old strike. In 1967, Congress acted three times to deal with a nationwide rail strike, the first strike in 20 years. Two actions postponed the strike, the third ended the strike after a 2-day walkout. This problem involved the shopcraft unions versus the railroads.

In the spring of 1970, Congress headed off a rail strike first by postponing the strike for a month or so, and later, by enacting legislation that imposed a 17-month dispute between the management and four shop craft unions. In December 1970, Congress was beat to the crossing. We tried to avoid another strike by enacting an 81-day moratorium, but action came too late to stop a brief walkout. This dispute also involved the shop craft unions and the railroads.

In May of this year, 1971, a short strike prompted Congress to approve emergency legislation that sent 13,500 signalmen back to work and ordered the railroads to give the workers an interim 13.5 percent wage increase. Surely you know what my next line is going to be—that's a helluva way to run a railroad—for both labor and management.

And that's my whole purpose in my legislative attempt for a permament solution—the Congress should not be charged with settling disputes between labor and management.

But, the Railway Labor Act is old and rusty. It has lost much of its muscle. As a result, collective bargaining has broken down. The Railway Labor Act does little if anything to encourage management or labor to settle their differences because, as a matter of practice, neither side begins to bargain until a Presidential Emergency Board is appointed. Even then, the bargaining is suspect because each side makes extreme demands because they expect the Board to strike a compromise.

In my opinion, a legislative overhaul of the Railway Labor Act is the only real permanent solution.

Mr. Chairman, for the last 5 years I have felt like a man crying "wolf." I have introduced and reintroduced the "arsenal of weapons" approach to legislation and I have complained that a strike was coming, and nobody, or at least few, ever listened.

Well, the strikes have been coming more frequently, and the Nation, and Congress, seem to have started listening.

We need legislation for several obvious reasons:

One, collective bargaining is not working.

Two, the Nation's economy is so shaky that we simply cannot afford another nationwide tie-up.

And, third, the Railway Labor Act is as antiquated as a 1929 Dusenberg and not nearly as classic.

In candor, I must say that the only bill which could ever pass the Congress would have to be a bill which would have provisions which are distasteful perhaps to both labor and management.

Also, if you are to be completely realistic, you must consider all the factors which have and will contribute to delay in getting legislation passed: The disagreement between labor and management over compulsory arbitration, the calm which always follows the passage of

emergency legislation, and the consequences of the final court decision on selective strikes. All these things add to the delay. All these things take the heat off for action.

Now that I have talked generally about the problems, I want to discuss my personal solution, H.R. 2357.

Mr. Chairman, I want to point out that I have discussed my bill with members of the labor committee of the American Bar Association. This labor committee, which has been at work on drafting legislation to help find a solution to the problem for some 6 or 7 years or more, has visited with me about the proposal I offered.

I may say to the committee the American Bar Association has approved generally the proposal I drafted and have offered. The ABA proposal which they have made specifically and my bill are not too far apart, and I predict that the American Bar Association Labor Committee and my approach may reach an accord as these hearings go along.

The bill that I have offered amends section 10 of the Railway Labor Act, that section which authorizes the National Mediation Board to notify the President when a dispute of certain seriousness occurs. The President, then, may create an Emergency Board—which, in effect, is another mediation board—to consider the dispute and try to effect a settlement.

If the Emergency Board, under present law, fails then the parties are free to strike.

After these procedures are exhausted, there is no remedy available, other than congressional intervention. The parties are free to strike or lockout.

Under my bill, when the President is notified by the National Mediation Board of a dispute, he immediately may proceed under either of two broad alternatives: (1) If he determines that the dispute is not one of immediate urgency, he may proceed through another mediation board, termed an emergency board. On the other hand (2) if he determines that the national defense, health, or safety is imperiled, he may immediately proceed under remedies involving a special board (arbitration); limited seizure of the concerned carriers; or a congressional remedy in which the President specifically recommends a settlement, or any combination of these three items.

The bill provides that if the emergency board route is completed, then the dispute may proceed through the remedies of arbitration, seizure of congressional relief, simply on the standard that the dispute threatens to interrupt essential transportation service in a given area. It is not necessary that a "national emergency" be found in order to reach the final three alternatives, and this provision assures that the flow of procedures will not become logjammed as they have done in the past.

I would point out that if you were to follow the procedures in my measure—that is, if you went from the mediation board to the President and if he then says substantially it would interrupt interstate and foreign commerce—then the emergency board would go into action and it would analyze it, make certain findings of fact, make a report to the President, send it to the President, and then we have the cooling-off period, and there are three other steps that could be taken. All of this, including the steps on the right-hand side of the page, would extend the time for negotiation a total of some 320 days.

So I would want to make it plain that this is not a quick approach, and some would say that this stretches it out too much. I want to emphasize that is the very purpose of the method.

The approach in my bill—and I continue on page 4—the approach of my bill, in broadest terms, is to lengthen the process for reaching a voluntary settlement and gives the President the widest possible range of alternatives for dealing with a serious dispute. It is called an "arsenal of weapons" procedure.

It gives him authority to take any of several alternatives at each step along the way, and it generally allows him to pick and choose between the alternatives or to select a procedure incorporating several aspects of the choices involved.

It even allows him to take no action, if he so desires, leaving the dispute open to normal bargaining and strike remedies.

To respond to any kind of situation, the bill gives the President alternatives which are or might be highly onerous to both sides.

If it is deemed that the union has not bargained in good faith, the President might make a form of arbitration; if it appears management is the party which has not lived up to its bargaining duties, then the President might ultimately select a remedy involving a form of seizure of the carrier involved.

In this way, the parties will remain uncertain of the method of any final Government intervention, and with distasteful alternatives resting in the discretion of the President, neither labor nor management would want to appear to be the unreasonable bargaining party.

This is the way to restore true collective bargaining, and this is the way to promote voluntary settlements between the parties. This may be the best way to save collective bargaining.

I would like to say a word at this point about my including a provision for seizure in the bill. Incidentally, our colleague who has just testified did make accurate observations about the aspect of seizure. I realize that it is a very extreme measure and that in our system of government its place is found, if ever, only in the narrowest of instances.

As you know, seizure was not included in the bill I first introduced in 1967. As you also know, we saw absolutely no action on that 1967 measure. It did not budge an inch—even though it did serve as the ad hoc remedy for the 1967 rail strike.

The House Interstate and Foreign Commerce Committee, for several years now, has had bills which take either of two approaches for solving rail and airline disputes. Either they proceed only with some form of compulsory arbitration or they utilize only a form of seizure.

It is clear now that this is a lopsided approach and one which does not have a chance to run the legislative gauntlet. There must be a balance built in the law, and unfortunately, it seems that balance in a choice-of-procedures approach calls for alternatives which are truly repugnant to each side.

This is the method by which the public makes its voice heard. And this is the means for assuring that neither party makes unreasonable demands or fails to bargain.

Some critics have said the multiple choice of procedures gives the President too much of a burden and too much authority. Frankly, I think one of the greatest attractions is the varied choice of procedures. The President is not bound to take extreme steps when the dis-

pute does not warrant it, and throughout the negotiations both parties are left "in the dark" as to whether there will be any intervention at all—and this, I believe, is conducive to good-faith bargaining—and finally, if intervention is needed, the President may tailor the remedy to fit the need.

Mr. Chairman, as we all know, there are several bills before our committee. My bill is just one such approach. And, I am willing to consider amendments to my legislation which would incorporate most or all of the features of the other bills. This should be done to strengthen the President's position in national transportation strike.

For example, a major alternative is missing from the arsenal I propose. This is the selective strike. The courts have ruled that a selective strike is legal in the railroad industry where bargaining is done on a national basis. However, a lot of questions were left unanswered by the Supreme Court's decision which upheld the court of appeals in allowing selective strikes.

A big question is: What percentage of our railroad system can we allow to be inactivated by a dispute and still protect the public interest of the Nation? In looking for the legal test, should the question be limited to the effect on a particular region or should we consider the effect in the entire Nation?

Also, should the selective strike be allowed to swing into play before one of the other alternatives in the arsenal-of-weapons approach is utilized? If we make selective-strike procedure required first, then we may never see a settlement of any strike.

Actually, a selective strike does not lead to settlement of the central dispute between labor and management. It does allow labor and management to slash at each other's pocketbook while forcing the Government to stand by powerless—powerless, that is, until a national emergency is declared. Selective strike is a weapon; it has been recognized by the court; it must be one of the approaches, and with that I would agree; it should not have priority or legal sanction above all other choices.

It has been observed, Mr. Chairman, that when we talk about selective strikes, that some have said to me and perhaps to you: "Selective strike" means to select which part of the country and to select what shippers or carriers are to be penalized.

I don't know that that is the full analysis, but certainly that does enter into it.

Mr. Chairman, strikes in the transportation industry, particularly the railroad industry, are different from other national strikes. A large segment of our society depends on the railroads to haul the stuff that commerce is all about—everything from food to building materials to machinery and so on. During a rail strike, raw materials and finished products alike sit idle. Eventually, so do the consumers.

The point is, Mr. Chairman, a decision ultimately must be reached: How long can a selective strike be allowed to continue? I think there is obviously a point in time when the President must say, "That's enough," to both labor and management. At this point, the President must look for another alternative in his arsenal of weapons.

One alternative could be binding arbitration or the "last-offer" approach. This approach is covered in the legislation offered by our friend and colleague Hon. James Harvey, who made a very able

presentation of his proposal to you a few minutes ago. His bill allows the President flexibility to move from a selective strike to the last-offer alternative. I agree with the philosophy behind the latitude given the President, but I think it would be wise to expand his authority to allow the President to choose either last offer or binding arbitration.

Several bills before us deal with selective strikes, and obviously, there is a place for this approach in the arsenal of weapons. Care should be taken, however, to make this approach on a par or equity with the other weapons in the bag. I think we must make certain that the President would not choose one gun over the other; each should be the same size barrel.

As we range through the possible legislative solutions presented to this committee, we must consider the last-offer alternative. I have no real objections to the last-offer approach other than to say I would prefer some other approaches—like the mediation-to-finality suggestion over this particular solution. Here again, in the arsenal-of-weapons approach, you could include both approaches. Under either system, a third party is, in effect, writing a contract for the disputing parties. For the last-offer approach, a board makes the final decision. Under mediation to finality or binding arbitration, a board again is charged with the responsibility of working out a compromise.

Regardless of the final form of permanent legislation, I think the main point is that something should be on the books to handle these disputes. Too often, Congress is called on to select a means to settle disputes, and it invariably works out that one side or the other feels they have been wronged. That type of action hardly encompasses the goals we seek—to avert strikes while at all times preserving collective bargaining.

Now, if I may summarize, Mr. Chairman, my approach is the arsenal-of-weapons approach. It gives to the President at least three or four different approaches he may use at any one time to settle the strike. It does stretch out the time for almost a year. It keeps the parties bargaining. It keeps them guessing. It keeps them in the dark as to what is going to happen to whom and by whom. It tries to keep the parties bargaining.

Then, in the event that this course is followed, at some point after 320 days there would be a special board which would make a recommendation for binding arbitration for a period not to exceed 2 years.

Now, we must recognize that selective strike has to be a part of this problem and this solution. I do not think it should be first. If we make it first, then I say we may never settle these disputes. It ought to be on a par and equity with other procedures. Again, if we use selective strike, you have so many questions that have not been answered that it is not completely clear what will happen even if we follow the procedures about the ton-miles carried of revenue. We have so many problems that have not been answered.

If we come to the point where you make the last offer, though, I say that that is binding arbitration, as the gentleman from New York has said. You may call it any name you want, but the last offer is binding arbitration, and you may want to call it the last offer, but it still has the effect of having a board, a third party write a contract for the parties. I will admit under my bill that a special board would make a

recommendation and that would be binding. I submit to you there is very little difference there.

The question we really come down to is this: What is the best approach? Do we really bring the parties closer together if we use the last offer? Or do we get a more equitable solution if we use a special board? I think really that is what this committee may be faced with when we finally grind out any legislation if you are able to do it. That is, will you actually get the parties together by this last-offer approach? I really question that you will.

We would like to tell ourselves that we will get them so close that they must say the most reasonable offer will be selected. If we do buy the proposition that there is a certain amount of fear or apprehension on the part of the bargaining parties that they must get close together perhaps that is the strength of the last offer. I therefore do not dismiss it, because it could be a good solution.

I submit to you this proposition: Under the special-board procedure, where binding arbitration is not reached, you have both parties making offers, and I do not submit they are going to offer the very extremes of their positions, and that might be the case when they first start, but when they come down to that special board, they are going to have certain points, one, two, three, on both sides if they want, and I think they would rather trust a special board to take part of their proposition as well as part of the other to balance off their positions rather than they would prefer to see one side win. That is what really happens in last offer.

So you have to ask yourselves this question: Do you want to take a special board? We have always avoided the special board or binding arbitration because collective bargaining is so inherent to our system that nobody wants to touch it. That is understandable. It is by far and away the best system we have ever devised to settle a strike.

I submit if it is not working properly, we have to find some other answer, and I think the only way to save collective bargaining is to approach it from some basis such as we have had.

I do not need to comment, I believe, on these various bills. I do not like the administration's approach because that is either a cooling-off period, partial operation, and then a last offer. But I do say that selective strikes and last offer does enter into the picture. You have to decide what will be the arsenal, what will be the approach.

My interest in this bill is not that either side has come to me and said, "Will you sponsor this legislation?" My interest stems from the fact that a professor in my home town teaching constitutional and labor law said, years ago, that something has to be done to correct this, and it was through his encouragement I have offered this approach. I am hopeful he will be able to testify later before this committee.

In the meantime, I submit to you that the arsenal-of-weapons approach is the fairest approach that we can have because it does reach a solution.

Thank you, gentlemen.

(Attachment to Mr. Pickle's statement follows:)

SCHEMATIC OUTLINE OF PICKLE TRANSPORTATION STRIKE BILL

Mediation Board

Reports if a dispute exists which threatens "substantially to interrupt interstate or foreign commerce to a degree such as to deprive any section of the country of essential transportation service."

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President

"In his discretion," may thereupon create an Emergency Board; or, if he determines that the "dispute immediately imperils the national defense, health or safety, he may proceed under the provisions of subsection (b), (c) or (d)."

Emergency Board (Mediation)

1) Size & membership is choice of President;
2) Board must report within 60-120 days of appointment;
3) If instructed by President, Board report will contain findings of fact and/or recommendations for settlement.

↓

President

1) Holds Emgy Bd report for 30 days cooling-off;
2) After cooling-off, President may return dispute to Emgy Bd for 30 days consideration and for their recommendation on whether to proceed under (b), (c) or (d);
3) President may proceed under (b), (c) or (d) or any combination thereof; he is not bound to follow the recommendations of the Emgy Bd as to which procedures to follow;
4) If President elects to proceed under (b), (c) or (d), he may impose the recommended settlement of the Emgy Bd as interim working conditions, pending the time required to exhaust procedures of (b), (c) and (d).
5) Whenever President determines to pursue (b), (c) or (d) (whether or not an Emgy Bd was used) he shall notify the parties 10 days before entering such procedures--such notice need not specify to the parties which of the steps or combination thereof will be taken.

(b). Special Board (Arbitration)

1) Parties have 10 days to select members and procedures; if they fail to do so, President performs this function;
2) Board is composed of 5 members; 3 public, one labor and one management
3) Board has from 60-120 days from appointment to report;
4) Board has power to make a settlement binding on the parties for a period of the Bosrd's choice, but less than 2 years;

(c). Seizure of concerned carriers

1) Management of carriers is continued by Secretary of Commerce;
2) All corporate activities continue as in the normal course of business;
3) Working conditions remain the same unless the President imposed the Emgy Bd recommendations.

(d). Congressional remedy.

1) If the President elects to proceed under the provisions of this subsection, "he shall transmit to Congress such recommendations for legislation as he may determine are required."

Mr. JARMAN. For the subcommittee, I want to thank our colleague in behalf of the committee for his able presentation this morning. The gentleman has been a leader for years in trying to arrive at an equitable legislative solution to this problem, and we value his good counsel.

Mr. PICKLE. Thank you, Mr. Chairman. Mr. Chairman, Mr. Dave Richeson, my legislative assistant, is with me this morning.

Mr. JARMAN. Mr. Podell.

Mr. PODELL. I, too, Mr. Chairman, would like to congratulate the gentleman from Texas on a very fine presentation. I am sure that even our great military-industrial complex will be envious of the "arsenal of weapons" he has displayed here today.

It is difficult, Mr. Pickle, to try to find an alternative to collective bargaining which is not binding arbitration, but which your proposal and Mr. Harvey's does do.

I am concerned, though, about another area of your testimony, in which you refer to the broad alternatives under which the President may intervene. You said, "if the President determines that the dispute is not one of immediate urgency," but I cannot conceive how any strike is not deemed to be of immediate urgency. Certainly any attempt or any strike by any industry in the country is urgent.

What you have done here is taken the entire ball of wax and given it to the President and said, in effect, "Go ahead; these are your alternatives; just choose from them." What we seem to miss here are the incentives that require labor and management to sit down and go through the give-and-take that is necessary to reach an agreement.

Somehow I seem to feel, as I did under the Harvey bill, that when "push" comes to "shove," management can sit back, and know eventually it will be decided by the President and a board appointed by him, so why should they give at this point?

Other than that, I would like to congratulate you.

Mr. PICKLE. I would observe, Mr. Podell, that when you say that labor would say, "Why would they bargain at this point?"—and that would apply to both labor and management—I think it is the incentive that we have reference to. It works both ways.

Mr. PODELL. I thank the gentleman.

Mr. PICKLE. Thank you.

Mr. JARMAN. Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman. Mr. Pickle, we all regret you elected to leave our Transportation Subcommittee but are delighted you continued your interest in this problem. I know of the dedication and time you spent in preparing legislation in previous sessions in this area, and I hope that one of these bills is adopted so we could pass this problem back to where it belongs. I now will yield to my friend from Michigan, Mr. Harvey.

Mr. PICKLE. Before you yield, I want to observe that I regret not being on the committee. I went to the Investigating Subcommittee, and I hope we have more success than we did in the investigating field, being the CBS episode, and it was not very successful.

Mr. HARVEY. Thank you for yielding, Mr. Devine. I have already taken more than my share of the committee's time, but I wanted to say to my friend from Texas that he truly should be congratulated because he has done an outstanding job in this field and produced a very fine bill in my judgment.

As I testified earlier, I do not agree with all of the weapons you have selected or that you have suggested should be given to the President, but, nevertheless, I think the gentleman is responsible for the major feature that absolutely must go into any bill that we report out—that is, that we do have to give the President the choice of whatever option he wants to use in order to settle this dispute.

This is the salient feature in the gentleman's bill which is so important, which we incorporated in ours, and I think he ought to be congratulated on that, and I would like to do that.

Mr. PICKLE. I thank the gentleman.

Mr. JARMAN. Mr. Metcalfe.

Mr. METCALFE. Mr. Chairman, I don't have any questions, but I am very much impressed and, I might say, concerned about the fact, and you have demonstrated, Mr. Pickle, in your presentation, your great concern for the Nation, especially in regards to labor.

I am most appreciative of the input you have given us, I mean as far as your years of concern and years of study and your presentations, and I would add my compliments to those of my distinguished colleagues.

Mr. PICKLE. Thank you, Mr. Metcalfe.

Mr. JARMAN. Mr. Skubitz.

Mr. SKUBITZ. Thank you, Mr. Chairman. The gentleman from Texas is always very persuasive. I do have a few questions, Mr. Pickle.

Did I understand you to say that the program you have outlined would extend over a 320-day period?

Mr. PICKLE. Yes; if all steps were followed through to completion. You see, it can go one of two ways: One, if just a strike threatens to substantially interrupt progress, then it would go to the mediation board and then right on through.

Mr. SKUBITZ. I understand.

Mr. PICKLE. Then, at the end of that, it would automatically go to other steps—special board, seizure, and congressional remedy—and all of that could amount to 320 days.

Mr. SKUBITZ. I am sorry. I stepped out of the room a moment but I thought I heard you say, as I reentered, that any binding agreement which was suggested or presented could last only 2 years; is that correct?

Mr. PICKLE. This is correct.

Mr. SKUBITZ. Would the contract last for 2 years from the date of the procedural agreements, or if procedural problems required a year, would that period be included in the 2-year contract?

Mr. PICKLE. It could last up to 2 years from the date of the final binding settlement. The length of the settlement would be up to the Board's decision. Now, one proposal, Mr. Skubitz, of the American Bar Association, is that this would be for settlement up to 3 years, so that you would not be getting into another one by the time one ended. That is a good point, and it may be something that I will offer at a later point.

Mr. SKUBITZ. Actually, then, if the period runs 2 years from the date of the binding agreement, isn't it actually a 3-year agreement? It would appear to be a 3-year agreement since, on this step-by-step procedure, it could take 320 days, which disposes of 1 year?

Mr. PICKLE. Well, that is still during the time they negotiate. They bargain and negotiate and appeal and go through all of the steps upward. Then, at that point, there is a binding arbitration and they can go 2 years from that point, which would be nearly 3 years.

Mr. SKUBITZ. Then would the agreement be retroactive for 1 year, this covering 3 years? Surely, any agreement that is reached would have to be retroactive, would it not?

Mr. PICKLE. Well, they are just in kind of a status quo during that time while bargaining. However, of course, the President has the power to impose the recommended settlement of the Emergency Board as interim working conditions until the dispute is settled.

Mr. SKUBITZ. Let us assume a contract expires on January 1 and bargaining is begun. How long from the day of the strike can bargaining continue? Is it 320 days?

Mr. PICKLE. Yes; it could be up to 320 days.

Mr. SKUBITZ. Now, they are actually not operating under any contract for 320 days except perhaps the old contract, is that correct?

Mr. PICKLE. That is correct.

Mr. SKUBITZ. All right, suppose bargaining continues for 320 days before a new binding agreement is reached. That agreement would have to be retroactive back to the beginning of my assumed January 1, is that correct?

Mr. PICKLE. The effective dates of the arbitration decision would be determined by that decision itself.

Mr. SKUBITZ. Then the new contract would run 2 additional years from the agreement date which makes 3 years in all, is that not so?

Mr. PICKLE. In the example you use it could run up to 3 years.

Mr. SKUBITZ. Or nearly so.

My next point, looking at the chart before you, deals with your proposed option—recommending legislation to Congress. Aren't we getting ourselves in the same boat we are in today; that is, the President recommends legislation? We get boxed up in the committee again, so where do we go from there?

Mr. PICKLE. I don't think we could ever reach a point where the Congress would not possibly be involved in one of these solutions.

Mr. SKUBITZ. I refer to the possibility of the President saying, "I don't want compulsory arbitration, I don't want possession, so I recommend legislation." Would not that legislation come before this committee; would not the monkey be on our back; and would we sit on it for another 2 years or so, or what would happen?

Mr. PICKLE. Mr. Skubitz, we intervened so many times—that is, Congress—the last 6 years, that it has almost become the rule rather than the exception. Unless you want to continue that procedure, we had better hope that we can find a different approach so that the Congress will not be the mediator of the strikes.

I do think, at any approach, at some point, you cannot take away the right of Congress to actually consider specific legislation on their own or recommended by the President.

Mr. SKUBITZ. I agree. We interfered in the past, and what we have really done is temporarily granted certain benefits and extended some more time, hoping the problem would solve itself.

The point I make here is: When we have these three alternatives you suggest, the President could come along with a legislative proposal, suggesting to Congress that we do certain things. Now, we could do what we have done in the past—forget his bill and pass our own legislation—so we are right then back where we started if we use your third alternative.

Mr. PICKLE. Well, I would assume that the President would use all other alternatives before he came to that aspect.

Mr. SKUBITZ. You mean compulsory arbitration?

Mr. PICKLE. Possibly, before he would actually make a recommendation to Congress, but actually we don't know what he would do.

Now, there is apprehension on both sides that they are not sure they want to trust the President with these alternatives; it gives him too much power. This is a legitimate reservation for either side to have, because it depends on who is in the White House.

I submit, though, the President is not going to play and should not play politics with a national strike. There is naturally going to be a tendency to have certain feelings about a certain approach, but these strikes tie up the Nation's economy, and we must find an answer and we must trust the President, whatever party he is, to say in this instance it is in the public interest.

Mr. SKUBITZ. I agree we must find some solution. I am trying to learn more about your particular suggestion, since differences exist between what you and Mr. Harvey have presented to us.

Incidentally the compulsory arbitration proposal you suggest could require the establishment of a special arbitration board. How many members would be on it?

Mr. PICKLE. The board is composed of five members—three from the public, one labor, and one management.

Mr. SKUBITZ. Do you feel that would be better than the suggestion Mr. Harvey presented—the final offer by each group?

Mr. PICKLE. I feel a special board—and the board under Mr. Harvey's approach is much the same, and the number of members may perhaps vary—but a special board is a special board.

Mr. SKUBITZ. As I understand Mr. Harvey's suggestion, two sealed envelopes are brought to the board with a final offer from each group; is this correct?

Mr. HARVEY. That is correct, but there are four sealed envelopes brought before the board, because each party can introduce an offer in the alternative, which could be important in dealing with salaries and workrule changes and so forth; so they have two offers in the alternative, and they will be done in secret as well.

Mr. SKUBITZ. Then under the Harvey bill one of the four offers must be accepted; under the compulsory arbitration's proposal, all of the various offers that are made may be considered in formulating the arbitration board's final decision.

Mr. PICKLE. Of course, Mr. Harvey is in a better position to explain his bill, but, as I understand it, really these are sort of preliminary offers and you finally come down, when you are up to talk, you take the last offer, and that is the only one we may really know what the parties wish to advance. The others, insofar as we know, may be just preliminary attempts. But it still goes before a board whether under my approach or Mr. Harvey's approach.

Mr. SKUBITZ. That is all. Thank you.

Mr. PICKLE. Mr. Chairman, may I observe, in conclusion here, I would much prefer the preservation of collective bargaining. We could choose to take no action, but we have found out that Congress cannot stand by when the Nation is ensnarled and under the grips of a devastating transportation strike.

We have reached a point where we simply cannot have them, so we have to find some other kind of approach. I don't think that the American people are going to tolerate delays in finding solutions for this problem or problems.

I don't think we, as Members of Congress, realize how deeply and how intensely the public feels on this subject. I think time is running out on us to find a better approach and a better answer.

We are finding binding arbitration in big cities like New York, in the Postal Union, and I think perhaps we have reached a point where we might say it is not unreasonable, to protect the public interest, by finding some way to get a settlement to these disputes. I thank you, Mr. Chairman.

Mr. JARMAN. Mr. Helstoski.

Mr. HELSTOSKI. I merely want to compliment my colleague for his fine statement.

Mr. PICKLE. Thank you, Mr. Helstoski.

Mr. JARMAN. Thank you very much.

Our next witness this morning is another colleague on the Interstate and Foreign Commerce Committee, Bob Eckhardt of Texas.

Mr. Eckhardt.

STATEMENT OF HON. BOB ECKHARDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. ECKHARDT. Mr. Chairman, as a member of this committee, I am most sensitive of the committee's demands on time and wanted to commence by asking the committee if you would prefer that I speak tomorrow? I would like for the committee to fully exercise that option. It will be no inconvenience to me because I would have given this testimony whether I were to be heard today or not. So, it would be no inconvenience.

Mr. JARMAN. Well, we have several other Members of Congress scheduled to appear today and we thought that we would do the best we could with the time factor, that we would continue until a quorum call.

We certainly will not restrict your testimony before the subcommittee in any way, but I think it would be well if you could get into it and give you a chance to make your presentation now, if possible.

Mr. ECKHARDT. I thank the chairman. I would really prefer it that way because it can be somewhat responsive to previous testimony, but I certainly wanted to offer the committee the option.

I wonder, Mr. Chairman, if we might have that Railway Labor Act chart before us for observation. (See chart 1, p. 153.)

I certainly do want to commend my distinguished colleague, Mr. Harvey, for not only the preparation of some very excellent charts, but also one of the most comprehensive presentations of the entire question and coverage of the various bills that I think has ever come before Congress. My unbounded regard for his ability and for his integrity makes me hesitate to raise some criticisms and those I do offer are done only in the sense of a Representative with a duty to do so, but with the fullest recognition of his work in this regard.

On the chart "Railway Labor Act," I think this must be a little bit amended after the case of *Hudson Railway Company* v. *UTU*, and that in addition to "national strike" there must also be "selective strike" as another choice. Of course, it is generally known that the original decision of the district court prevented selective strikes. The Court of Appeals for the District of Columbia, in *Delaware & Hudson Railroad*

Co. v. *UTU* recognized the availability of selective strikes under the circumstances set out in that case and the Supreme Court denied certiorari. So I think we need that change on the chart.

There is one other point I should like to make with respect to the testimony given by my colleague, Mr. Harvey, in which he stated, "representatives and friends of organized labor will present arguments for unrestricted union action such as we are now experiencing." I would suggest that we are not now experiencing unrestricted union action and I should like to point out in connection with this chart how this is so. If the members of the committee will look at their own copies of the chart which is attached to Mr. Harvey's testimony, it might be well to mark the dates actually involved in this labor dispute.

If I may be permitted, I should like to point them out on the chart. It would be well to mark at the beginning of this square the date October 20, 1969, and that is when the first notice was given by the unions of the desire to bargain and alter the contract.

Then, in this space here between the square and circle, the date April 16, 1970, should be marked and that was the date in which both parties notified the National Mediation Board of the desire to commence that procedure.

Then the date August 10, 1970, should be marked at this point as the date of termination or the date of the National Mediation Board's report, which commenced the 30-day waiting period.

At this point there should be marked the date September 10, 1970, which would be the end of the 30-day waiting period, when the parties would be able to strike, were it not for the appointment of the Presidential Emergency Board. There was an extension of 8 days and on September 18, 1970, the Presidential Emergency Board went into effect.

The date November 10, 1970, was termed as the date by agreement on which the Board could report. Then the date of December 10, 1970, would terminate the 30-day waiting period.

Then the President signed Public Law 91–554, which put into effect wage increases accorded by the Board 178 for adoption in 1970 and extended the date here to March 1, 1971.

At the termination of this date, upon notice that UTU would like to strike, a selective strike injunction was issued on March 10, 1971, and it was not until March 31, 1971, that the court of appeals dissolved that injunction.

Now I respectfully submit that this is not precisely the situation of unrestricted union action that is imagined to exist under our present law. There is much restriction on union action under the present Railway Labor Act. I am not prepared to say that this is not desirable, but I am prepared to say that much of the balance in favor of a decision on the side of management is brought into the equation by the long period of time in which the status quo is preserved.

Actually a labor dispute is not exactly like a war, as some of my colleagues have indicated it to be, and indeed I may say that at the commencement of this hearing I was not altogether sure I was not before the Armed Services Committee when I heard considerable language concerning "mutual deterrent forces" and various arsenals and guns used in this operation.

The labor process is, of course, an adversary process and it is desirable in this process to build into it certain pressures and certain forces to bring about an agreement which is ultimately a voluntary agreement, but I submit that it is an oversimplification to treat this matter as a simple exercise of force in which ultimately one decision or another is taken more or less as a victory by the one party against the other.

I cannot help but be reminded, in the proposal of the administration with respect to a settlement, with what was called the Jim Bowie duel. It was a duel apparently invented by Jim Bowie and that is where the knife got its name and it was conducted by putting two men in a dark room, spinning them around until they were not sure of exactly where they were and arming each man with a bowie knife and then letting them hunt each other.

Now, neither side knew where the other was, and it strikes me that the proposal of the administration is very much like this: the parties offer a single initial proposal and an alternative proposal and amongst four proposals an ultimate decision is to be made.

Now, I do not understand there is a substantial difference between the administration proposal, at least with respect to the offer, of final offer and the Harvey proposal, and I would submit that this does not take into account the realities of the collective bargaining process.

Now, I am not speaking altogether from just opinions derived in the last manner of months or even in the last several years on the question of collective bargaining. I have myself engaged in collective bargaining, I have myself engaged in arbitration with respect to future wages; that is, a contract would be entered into in the future, once. Incidentally, it was not a very happy experience, and I have engaged in a great deal of arbitration with respect to existing conditions in a contract.

I think I can say, without any question of a doubt, that the only persons who really fully understand the vying interests of labor and management are the persons who are the representatives of labor and management. Even an attorney, reasonably familiar with labor relations with management, frequently has great difficulty in determining what is involved in a contract provision with respect to conditions of employment.

There was many a time when I have been faced with a problem that looked to me to be trivial, until one has an opportunity to expend many hours in finding out how that working rule or that condition of employment actually affects the people in the plant, and I very frequently discovered that what seemed trivial and what I would have settled out immediately without a cent of reimbursement for those raising the question, developed to be an extremely important human problem and frequently an important problem with respect to money. And to imagine that persons called upon to make a rim-fired judgment from the outside, men however well intentioned, or however well versed, may enter into this question which runs the whole gamut of labor relations, as a contract negotiation does, is to expect a great deal of human frailty.

Now, ordinarily an experienced arbitrator is not confronted with all of the problems existing between a union and management but only with a single identified grievance, which has already gone through perhaps three stages of grievance procedures. It has been tried at the

first level with the foreman and union representative at the plant, and it has been tried perhaps at a second level through the president of the local union taking care of grievance matters at, say, a local level and it has perhaps gone through a regional level in which persons higher up in the hierarchy of management deal with the problem and then there is a reference of these cases to arbitration, and then the decision is ultimately placed before a highly experienced arbitrator who then decides the issue after hearing the presentation possibly by lawyers on both sides.

But what is he deciding? He is deciding one single problem among many problems which are raised in the question of union-management relations, not the whole ball of wax. He is not setting up a new contract, but deciding something like the question of what should be done with respect to a cable splicer having a cable splicer's helper doing a certain job which the cable splicer says he ought to do and, therefore, his pay is undercut.

That is the narrow issue that such an experienced arbitrator after such winnowing down of the nature of the problem is usually confronted with.

If we are talking about compulsory determination of all of the terms of a contract, we are talking about the entire structure of labor-management relations, not only in that single area but concerning every conceivable issue respecting the human interests and aspirations of persons working in the plant and the limitations of management with respect to what it can pay and what is necessary in order to obtain an efficient operation of the plant.

Now, this is an extremely different situation. I would suggest to you that in confronting this problem of what should be done about strikes that create considerable difficulty, considerable dislocation, that you consider the magnitude of the question involved. It is, indeed, a tremendous question. It is not just the argument that you hear between those who are for labor and those who are for management. It is a question that has been worked out in the past by a kind of common law, recognized incidentally in the steelwork trilogy with respect to arbitration matters. But, again, the steelwork trilogy was dealing with a much more limited set of issues, that is contract interpretation, and not the question of outsiders drawing a contract for a union.

Now, recognizing these practical facts, during the last session of Congress I presented a bill which was at that time numbered as H.R. 19922, and very much the same bill is in Congress now as H.R. 3595, a bill by Chairman Staggers, Mr. Macdonald, and myself. The bill has not purported to set up any type of compulsory arbitration.

When I introduced the original bill, I said I thought that the provision in that bill making it legal to engage in selective strikes, but putting certain limitations on selective strikes, was actually the existing law and, indeed, the decision in *Delaware & Hudson Railway Co.* v. *UTU* supported my statement with respect to that portion of the bill.

That case held that selective strikes are permissible under the circumstances raised in that case. Of course, the difference between that decision and the bill is this, the primary differences: That the bill not only permitted selective strikes, but put certain limitations on selective strikes. It provided that no more than three railroads within a region could be struck at once, that they should not constitute more

than 40 percent of the traffic, and it provided limitations or provisions with respect to hauling of necessary goods that had to be moved because of security reasons or other reasons of necessity to be determined by the Secretary of the Department of Transportation and in those respects it limited what the *Hudson* case provided with respect to selective strikes.

Now, to be honest, it also went further than the *Hudson* case because the *Hudson* case does not provide that there may not be a lockout, a retaliatory lockout. Now, I am not prepared to say whether a retaliatory lockout is legal or not, but at least the *Hudson* case does not determine that issue. Whether or not it is legal will probably depend not on the Railway Labor Act, but rather on the question of the duty of the carrier to serve all members of the public if he can do so and if he is not struck, he may be under a duty to do so. But, at any rate, the *Hudson* case does not deal with this issue and the bill which I offered did.

Another thing that is different from the *Hudson* case, and which is more favorable to unions than the *Hudson* case, is the provision that where the proposal of the carrier, as, for instance, with respect to working conditions, is not made as an original proposal for modification of a contract, but is made as a counteroffer and is dealt with in the bargaining, that the carrier may not put that proposal into effect unilaterally.

Now, after the *Hudson* case, of course railroads that were not struck did, in fact, put their counterproposals into effect unilaterally.

There may be some argument one way or another as to whether they did that lawfully, but at least the *Hudson* case didn't restrict them in so placing their working conditions into effect unilaterally.

Now, you may argue with me that the proposals of the bill, H.R. 3595, are therefore not balanced and I suppose it is an argument that would be interminable because it deals with the questions of certain practicalities in collective bargaining, but I want to point out that that bill does not prohibit the employer from initiating a change in working conditions and in following the same route that the union is required to follow in order to get itself in a position for self-help. It does not prohibit the employer after doing so to engage in the same kind of self-help.

In other words, the employer can initiate a change in working conditions just like the union can initiate a proposed change in wages and at the time either would be free under the provisions of the Railway Labor Act, on the union side it can strike, and on the employer side it can unilaterally put into effect those changes in working conditions.

Of course, with respect to the carrier that is struck, it can unilaterally change working conditions even if those were offered as alternatives or at least as counteroffers. So the bill is not so one sided as it is sometimes indicated to be.

Now, I would like to say to this committee that I am not absolutely sure that we should change the laws that exist today. This is a difficult thing for a person to say who is a proponent of a piece of legislation, but let me tell you why I say that. When this bill was drafted, the *Hudson* case had not been decided. After the *Hudson* case was decided, terrific pressures were developed on both the union and upon the employer to come to agreement.

Now what are the employer's pressures? The pressures acting on the employer are these. In the first place, the struck railroad cannot operate, at least practically speaking. Railroads do shut down because they can't get people to work for them when there is a picket line up. Of course, that railroad loses money and it begins to put pressure on others within the association to come to a general agreement between all railroads and the unions.

So it is under pressures, it is under heavy pressures and, of course, I am sure that the railroads will tell you that tomorrow or the next day. But I submit to you the unions are under heavy pressures, too.

In the first place, as you will note, if you wrote down the dates I recited a minute ago, there has been approximately a year and a half that has passed or a little over that from the time the original opening of the contract occurred. Therefore, of course, persons are suffering from the failure to receive wage increases over that period of time.

There is plenty of pressure for a union to decide to come to an agreement. In addition to this, those persons on the struck railroads are suffering, as the railroads are suffering, because they are off of the job and they are not drawing their full pay.

There is always pressure on a union to come to an agreement from its own employees who are hitting the bricks at the time. This is a great pressure and not only a pressure of loss of wages, but a pressure of anxiety and insecurity because a decision has not yet been made.

In addition to this, there is the pressure of other employees who constitute a very large proportion of the employees on the railroads who are respecting picket lines and, believe me, this pressure of the brother worker against the worker on strike is not inconsiderable.

Mr. ADAMS. Would you yield there?

Mr. ECKHARDT. Certainly.

Mr. ADAMS. Are you anticipating that all of these contracts in the future are going to open and close at the same time or anticipating in your selective strike legislation that they would open and close at various times?

Mr. ECKHARDT. Various times, no change from the present.

But I am merely submitting under the decision which I think is a very wise one in the Court of Appeals of the District of Columbia, much of these pressures that have been discussed here with respect to the various bills, like the Pickle bill and the Harvey bill, which, incidentally, I think is a bill that shows a tremendous amount of consideration of the problem I am discussing here, I would only disagree, not because of the intent or the direction or the sincerity of the author, but rather I think the bill does not introduce or it introduces an extremely difficult problem in collective bargaining that should not be introduced at this time.

But I say to you that pressures now exist and pressures exist which are different from any that we have seen in most of our times within this Congress, because the *Hudson* case made a great difference. It brought back into play the ordinary forces of collective bargaining, the ones I had just described.

Now, one George Bernard Shaw wrote a little essay and I sometimes suppose he only wrote plays in order that he could write prefaces to a play called "Androcles and the Lion" and I think it has some significance here.

The name of the preface was "Why Not Try Christianity?" And the burden of the essay was that it had never really been tried.

I suggest to you, on this question of railroad strikes, why not try collective bargaining? And I submit to you, within the last reasonable period of time it has not been tried. Therefore, I come to you in a very, very unusual position, the position of an author of a bill that would suggest that it be held in abeyance until collective bargaining is tried.

I would like to submit to you, though, one possible approach to this matter, if legislation is needed, it might be desirable ultimately to provide an option at the end of the present provisions of the Railway Labor Act in which the labor union could choose to forgo its right to strike for another 30 days and the quid pro quo for so doing would be the provisions for a reasonably regulated selective strike as provided in our bill. I think that that would create an incentive for the union not to strike and create the situation which now exists.

There are a lot of pains and penalties of this strike. There are pains to the employer and there are also pains to a lot of employees on the railroads that are not struck whose working conditions are diminishing and if you check on the details of that matter, you will find that many men that have gone out to drive a train from one place to another and would have received a considerable rate of pay have had their pay cut very drastically because of the change in working conditions.

You know, after all, pay is not by any means the whole thing and unless working conditions are pegged at a fixed base, pay rates mean nothing, and of course, this base has been loosed with respect to the unstruck railroads.

I submit there would be an incentive for the union not to have struck and, of course, if it did not strike, then the Railway Labor Act would require that those conditions remain in effect and perhaps much suffering and much pressure, which may have been unnecessary, could be avoided for another 30 days in order for the union to buy the right to have a more completely controlled selective strike at the end of that 30 days.

I submit that at least is a possibility and I also submit that the same rights under the same sorts of circumstances with respect to opening the contract would be available to the employer.

Mr. Chairman, that completes my statement and I thank the committee.

Mr. ADAMS (presiding). Thank you, Mr. Eckhardt. I think your statement has been excellent.

Mr. Podell.

Mr. PODELL. I would like to congratulate the gentleman from Texas. I certainly feel he has touched the key issue. I myself was wondering for some time why legislation was needed. I agree wholeheartedly with the gentleman's position. I think it is proper and would like to congratulate him for it.

Mr. ECKHARDT. I thank the gentleman.

Mr. ADAMS. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman.

I certainly want to congratulate my good friend from Texas. I readily admit he is one of the most knowledgeable men in the House in the area of management and labor relations and we all listen when

he speaks. I studied the bill that he and our chairman, Mr. Staggers, introduced, very, very carefully and I do not disagree with everything he says. I think we are both trying desperately to achieve a balance, a balance between labor, on the one hand, whose difficulties and whose hardships he has very eloquently expressed here this morning, and a balance between management, on the other hand, and a third factor, let's say the public interest as well.

I would just address myself very quickly to one or two of his remarks, since he did mention that the parties themselves know best, not the arbitrators, or not their lawyers. With this I wholeheartedly concur. It was for this reason that we thought that "final offer selection" was so much better than any form of compulsory arbitration, because the parties themselves participate in final offer selection and they are, as the gentleman from Texas said, the only ones fully cognizant with all of the ramifications and all of the problems that each individually faces.

The arbitrators are not. If I had to compare them, I would say that the final offer selection program is very similar to what we practice in competitive bidding. There we take sealed bids one against the other and each contractor who submits the bid is totally cognizant of all of the problems he faces. The practice there has worked very well and it has driven the parties together for the most part in their bidding. I still have faith although I said in my statement it has never been tried and it has not, of course, but I still have faith that final offer selection would tend to draw the parties very close together in their final view.

But I want to say again, I want to compliment the gentleman and congratulate him on the work he has done in the field and to say I look forward to working with him on this committee to develop a solution that will be mindful of the wishes of labor and wishes of management and probably, most of all, the welfare and health and safety of the American people.

Mr. ECKHARDT. I thank the gentleman very much for that statement. I would like briefly to comment on this final offer selection, because it is intriguing as a concept, but I think the point is this, that just as in any two-party system, just as in, for instance, a law case, or just as in a meeting between members of a subcommittee or committee, the interaction between parties with respect to a particular issue may result in avenues of solution that are beneficial to both parties which are never met by the original offers.

It is hard to give an example off-hand, but I know there are many situations in collective bargaining where both parties seem to be completely stalemated because there is an interest on the part of management that seems to be absolutely conflicting with that on the part of labor and this frequently has to do with efficiency of production and there are questions, for instance, like incentive pay as opposed to hourly pay, things of this nature.

And sometimes it is possible to find that the parties are not opposing each other diametrically, but are rather opposing collaterally so that a solution may be found that satisfies the objectives of both parties, because any lawyer knows that this is true in a lawsuit and I think any legislator, who has had experience on a committee, knows that frequently solutions can be found on subcommittees that cannot be found on committees and can be found on a committee that can't be found

on the floor of the House, for precisely the same reason, the floor of the House is ordinarily a situation in which the either/or, that is, you take this bid or you take that bid; but on a subcommittee the decision may be something in between.

Frankly, I think this sounds good, but I don't think it will work. But let me submit, without recommending, a possible approach of that nature which might at least possibly work, and that is a series of offers, each one of which must be closer to the other, or must not be given, and then at the point where one party, in effect, cashes in his chips and says, "This is the best offer I can make," it might be desirable to permit the other party to make a second offer and then select from final offers after a series of bids.

I don't recommend that, but I suggest it answers some of the questions and some of the problems with the suggestions that have heretofore been made. Of course, there is another point and that is that the sealed bid thing sounds good, but the employer always knows more about his business than the union does, so that the employer is always dealing with greater enlightenment as to what might ultimately come out than the union.

The union is, in effect, saying, "We need this much. What will you give?"

There is a necessity for interchange before the parties fully understand their respective positions. It seems to me the single final offer does not recognize that fact, but perhaps a succession of offers prohibiting getting further apart. If you are going to get further apart, you just say that is the last act you can say and then a subsequent offer after one party says, "This is all," they possibly reach the point that is suggested in the procedure you suggest in your bill, Mr. Harvey, as one of the alternate means.

Mr. ADAMS. Mr. Metcalfe.

Mr. METCALFE. Mr. Chairman, thank you very much.

It seems to me this morning we had an unusual array of star witnesses and I was very much impressed by the gentleman from Texas and I watched him very carefully and he made a marvelous and very thoughtful presentation without benefit of one note, which shows to me that he has given considerable thought to it and I would like to express my thanks to him and also for giving me an input that is going to help me in arriving at this very important decision, and I thank you for your very excellent statement.

Mr. ECKHARDT. I thank the gentleman.

Mr. ADAMS. Mr. Helstoski.

Mr. HELSTOSKI. Thank you, Mr. Chairman.

I want to compliment the gentleman from Texas for his very cogent remarks and very balanced presentation on the proposed legislation.

I have one question. You imply that the present process under the Railway Labor Act is a rather lengthy one. Do you suggest any modification to shorten this so that perhaps one side or the other might not be adversely affected because of the length of time involved?

Mr. ECKHARDT. Well, I think one thing that would shorten it would be the kind of suggestion that—well, let me put it this way. I think that actually the court's decision in the *Hudson* case will shorten it, because I think that up until the present time the situation that is

envisaged by the bargaining parties is that there will be no time at which any pressure can develop that will result in their ultimate settlement. Therefore, they tend to ride out the maximum periods of the act, recognizing that ultimately a nationwide strike will throw the matter into Congress anyway and that Congress then will frame its decision as a sort of mirror of determinations by the Board, final decision of the Board, as we have done several times.

As soon as the court brought back into the picture an ultimate possibility of a strike, which of course is the only thing that ever makes collective bargaining work, and I am not advocating a strike because I think unions and management fear a strike and do not desire that it ultimately occur, but it is the one thing that makes collective bargaining work, because it is a possible clout at the end of the line that requires both parties to try to come to agreement, and I think that very fact will tend to make the parties decide the case in the first or later stages.

I would suggest, too, if you do ultimately decide to provide that option after the last 30-day waiting period, in which the union might elect to forgo a strike for another 30 days, with the procedural requirements of the selective strike coming into effect after that period of time, I submit that that machinery would have the same kind of impelling influence on effective bargaining at earlier stages.

I think perhaps it would have even a little more force than the decision of the court, but I must say this, that you can hardly devise a better balance of pressures than that which results from the court of appeals' decision in the *Hudson* case.

Mr. HELSTOSKI. No further questions, Mr. Chairman.

Mr. ADAMS. Thank you very much, Mr. Helstoski.

Now, Mr. Eckhardt, I am certainly interested in your statement on the selective strike legislation and the court decision, as you and I have been asking people questions about the court decision for 2 or 3 years now. As I remember it, you indicated you believed, that under the *Hudson* case, railroad management would have the right to put into effect changes in work rules if all of the crafts went out at the same time and if a particular railroad is struck.

Mr. ECKHARDT. Under the *Hudson* case there is no prohibition against that.

Mr. ADAMS. All right, would it apply to crafts other than the craft which announced its intention to strike?

Mr. ECKHARDT. I would not think so. If one craft were not striking, but were merely respecting a picket line of others, I would not think that it would be put into effect.

Mr. ADAMS. All right. Now, suppose you have in effect a selective strike, as under the *Hudson* case, you had a settlement with one which establishes a pattern for that particular road and not for the others. Would other roads have the right at that point to put into effect changes in work rules?

Mr. ECKHARDT. Under the *Hudson* case?

Mr. ADAMS. Yes.

Mr. ECKHARDT. And is there an existing strike?

Mr. ADAMS. Yes, but they have not locked out. There is an existing strike and one road is settled and other roads have not been struck.

Mr. ECKHARDT. Well, aren't you envisaging exactly the situation that exists today?

Mr. ADAMS. I am.

Mr. ECKHARDT. I see nothing in the *Hudson* case that prevents changing the work rules. I think there are arguments that the work rules cannot be changed where the railroad is not struck, but the *Hudson* case I don't believe addressed that question.

Mr. ADAMS. As you interpret it, doesn't the Railway Labor Act require "Evergreen" contracts until you have, in effect, a completion of labor dispute machinery and, in effect, a strike? In other words, the Railway Labor Act determines that working conditions and wages must remain in effect until such time as there is a strike?

Mr. ECKHARDT. There is some respectable argument that those railroads not struck are still subject to the Evergreen clause, but, on the other hand, the railroads contend that the quid pro quo, or the other side of the coin, I suppose I should say, from the right to strike, is a right to change working conditions unilaterally and when there is, in effect, a dispute over a contract which will ultimately govern them all, that they are in a battle in which they can use comparable weapons to the right to strike and may use them selectively.

Mr. ADAMS. Your bill, however, would freeze the situation for the nonstruck operations, is that correct?

Mr. ECKHARDT. That is correct.

Mr. ADAMS. Thank you. Any questions?

Mr. HARVEY. No questions.

Mr. ADAMS. Thank you, Mr. Eckhardt, and the committee will stand in recess until 2 o'clock, at which time we will continue with witnesses that have been announced.

(Whereupon, at 12:40 p.m. the subcommittee recessed, to reconvene at 2 p.m. of the same day.)

AFTER RECESS

(The subcommittee reconvened at 2 p.m., Hon. Brock Adams presiding.)

Mr. ADAMS. The committee will come to order.

The first witness we have for this afternoon is the Honorable Lawrence G. Williams of Pennsylvania.

Welcome to the committee, Mr. Williams. We are very pleased to have you here today and are looking forward to your statement.

STATEMENT OF HON. LAWRENCE G. WILLIAMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. WILLIAMS. Thank you, Mr. Chairman.

I would like to have unanimous consent to enter my statement in the record and then proceed to make a short statement and answer any questions you may have.

Mr. ADAMS. Without objection your statement will be entered in the record following your remarks.

Mr. WILLIAMS. Fine.

Mr. Chairman, I am very pleased to appear here this morning and testify in favor of H.R. 9088, 9089 and 9571, which are all identical and which I believe are usually referred to as the Harvey bills.

Mr. Chairman, I don't have any position for or against unions or for or against management. Bnt I am convinced that the economy of this country, the union members, the members of management especially the railroads, and our consumers in this country, the general public, can no longer stand the impact of a national transportation strike.

On a number of occasions since I have been a Member of Congress, it has been up to the Congress to settle transportation disputes and I do not believe that this is a proper thing for the Congress to be doing. I do believe that we should take the Congress out of legislating in order to end transportation strikes, and I think if we do, we will encourage true collective bargaining in its purest form.

The people engaged in a strike, whether it be union or management, will not be able to look to Congress to settle their disputes and, as I stated before, the state of our economy today is in a somewhat precarious position. Our civilization has advanced to a point where we are shipping all kinds of perishable goods all across this country and I do not think that our economy can any longer sustain the impact of a national transportation strike.

While I would hope that on every occasion collective bargaining could be the answer, apparently it just can't be and this is why I believe this subcommittee has a responsibility, which it is discharging, of reporting out legislation under which we can avoid future national transportation strikes.

(Mr. Williams' prepared statement follows:)

STATEMENT OF HON. LAWRENCE G. WILLIAMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

It is a privilege for me to be here today and have the opportunity to present some of my thoughts on the railroad and transportation legislation before this body. I plan to mention some of the important problems encountered when labor and management disputes reach the emergency stage.

In looking back on time, we truly are living in an enlightened era for man. However, we do not always act like it is an enlightened era. In many ways our society is not performing up to its potential. And gentlemen, there is no question that throughout quite a few decades of large, emergency strike history—first with one industry, then another—that the majority of people in the United States are deeply dismayed with, and are unfavorably affected by crippling strikes. Especially during at least the past decade, strikes by walkout or by refusing to work, have been doing the country a great deal more damage than good.

The occurrence of a large transportation strike is a serious national matter for three groups of people. One of the groups is small and powerful—this is carrier management. The second group is medium-sized and also powerful—this is labor. And the third group is very large and weak—this is the consumer public numbering in the millions.

The medium-sized group, or labor, has achieved such confidence and power that it can address an ultimatum to the small group in such words as this:

"If you do not agree to my terms, I will hurt that undefended large group of consumers. And no matter what the consequences may be to them, I will prevent that large group of people from carrying on either their normal, or their emergency transportation activities."

In return the small group has so much power that it can dictate back to the medium-sized group:

"I am not going to agree to your terms even if you do hurt the people." That is the way the majority of the people are harmed by a strike.

A transportation strike becomes particularly serious at this time—when the economy of the Nation needs it least. On the other hand the economy definitely needs a "Pick-up." When a more vigorous economy and control of inflation are so important all across the country, it is especially important that the crush of a

strike should not take place. It takes cooperation of the carriers and labor, not conflict, to inject vigor into the economy. Also, if there ever was a time when we do not need more inflation, it is at this very time.

Under the present law and judicial rulings, any selective strike leads to escalation and the potential of a full, nationwide strike. This would be a calamity and cost very dearly. There are four areas where strikes always cost the country a great deal of money. One is in management where it is necessary that they bolster their top staff with high salaried specialists to deal with labor matters so they can stay in business. That expense would not be necessary if it were not for serious strikes.

For the worker and his family, strikes also result in a rock-bottom paycheck period—either a long one or a short one. Neither would that loss of income be necessary.

A third circumstance in which strikes are costly is that the industries which are allied to, or dependent upon the striking force are idled and forced to take a financial beating.

The fourth way strikes can force a huge billion dollar burden upon Americans is two-fold: The taxpaying public has to stand good for an expensive Federal control agency for labor, and even more unfortunate, to pay the expense of the U.S. Congress as an additional control agency.

I feel that the costly side of the strike picture is the absolute concern of the majority of Americans. Such losses are deadweight around the necks of all taxpayers and too often, during bargaining, strikers are able to keep such losses hidden in the woods as though they are not something they can do anything about. I feel that these losses are an issue, and it is the duty of the labor bargaining groups to have more real conscience about such expenses. These are obvious reasons that the kind of transportation strike now threatening like a cancer to spread to all parts of the country causes disastrous losses, and at the same time a rise in the inflationary spiral. These are results which the country cannot afford—and nobody wants.

It is time that business and labor become creative and find constructive ways of bargaining rather than one side resorting to irresponsibly walking out on the job when there is something to be displeased about. Even though the technique has been used for generations, Walking out and Locking out are demeaning techniques. It is no compliment to either side of a dispute that its members use that technique to get their way.

As the people of this Nation are taking steps to improve our environment, our living conditions, and civilization in general, surely we can find ways of communicating our needs to one another better than by refusing to cooperate with one another—better than turning our backs on each other—or better than refusing to take action which is for the common good of the majority.

Probably no other point is as important as this: Congress should not have the position it now has in industry—that of setting emergency transportation labor standards. Congress has been put in the position of setting industry's emergency pay standards. I repeat—this kind of action should not take place in Congress. In order to assure that the transportation strike does not spread to emergency proportions, I feel there should be various means for the President to be able to settle an emergency dispute. Legislation should provide that selective strikes could be permitted by the President, unless he finds, in a specific instance, that this would cause immediate imperilment of the national health and safety. He should be permitted to call for additional time at the bargaining table; should have authority to set up a mediation board, if necessary, to settle the strike; and that extremely strong impetus be provided to collective bargaining while still holding the promise of eliminating the divisiveness of compulsory arbitration.

It would be for the best good of the Nation that national emergency conditions should not be permitted in transportation disputes. Therefore, I am pleased to co-sponsor H.R. 9571, which is identical to H.R. 9088 and H.R. 9089, as the most certain and fair legislation to accomplish that.

I saw in the newspaper the other day that both transportation management and the unions want the government to stay out of their strikes. Of course that would be ideal. That is the way it should be. But, it appears that management and labor are not serious about keeping their problems to themselves. If they were serious about it, they would find ways of settling their differences which do not trample on such a great portion of the undeserving public.

Surely the day is at hand when American labor and American management should unitedly try to launch an era of progressive rather than regressive, labor bargaining. I hope we are living in a day of sufficient creativity and enlightened human reasoning that striking can be made old fashioned and outmoded in this great Nation.

Thank you.

Mr. ADAMS. Thank you very much, Mr. Williams.

Mr. Harvey.

Mr. HARVEY. I have no questions, Mr. Williams, but I thank you very, very much for your support in coming here this afternoon and for the emphasis you put on our getting out a bill to solve this problem because it is only through legislation we are eventually going to bring this problem to an ultimate solution.

I compliment you and thank you very much.

Mr. WILLIAMS. Thank you, Mr. Harvey.

Mr. ADAMS. Mr. Kuykendall.

Mr. KUYKENDALL. Mr. Williams, it is good to have you.

There is one portion of the Harvey bills and the administration bill that brings in the idea of having a committee or board, choosing the best of the final offers.

I have come around to the painful conclusion that whatever we pass through this Congress in the way of a satisfactory final way of settling, it will not be something that will be equally agreeable to both sides, but it is almost going to have a settlement that will be equally disagreeable to both sides; do you agree with that?

Mr. WILLIAMS. Yes; I certainly do. What you are really saying is, regardless of which it is, last offer or last alternative offer that is selected, I am quite confident that both sides will be unhappy to the extent that they did not get everything they wanted.

Mr. KUYKENDALL. Are you saying that you think the final solution should be feared by both sides so they would bargain in between?

Mr. WILLIAMS. I would think both labor and management would do everything they could before placing themselves in the position of having the board make the final decision. I would believe that they would make a greater effort to reach a solution through collective bargaining.

Mr. KUYKENDALL. So, in this case where in the past, and the record earlier this year and again last year, in my questions to representatives of organized labor I questioned why it always seemed that the panel, no matter how constituted, was never agreeable to labor and the answer, and it made sense to me, no panel, no matter how honest or well-intentioned, could understand work groups, but in this case both sides will understand the work groups who make the final offers; is that correct?

Mr. WILLIAMS. I would say there would be no question about that because all of this will be spelled out in a last offer and last alternative offer being made by both management and labor.

Mr. KUYKENDALL. So it won't be the panel's offer, but it will be by people who know the business; is that correct?

Mr. WILLIAMS. Yes; I would say that is true and that is one reason I support these bills.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. ADAMS. Thank you very much, Mr. Williams.

Mr. WILLIAMS. Thank you very much for the opportunity of appearing here.

Mr. ADAMS. We appreciate your appearing before the committee.

The next witness is the Honorable Wiley Mayne from Iowa.

Welcome, Mr. Mayne. We are very pleased to have you with us today.

STATEMENT OF HON. WILEY MAYNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. MAYNE. Thank you, Mr. Chairman and members of this distinguished subcommittee.

I sincerely appreciate your affording me this opportunity to appear before you and testify on behalf of the earliest possible reporting and enactment into law of "The Emergency Public Interest Protection Act."

Mr. Chairman, I am afflicted today with laryngitis, so I would like permission to submit my entire statement in the record and to give only parts of it orally in this appearance before you.

Mr. ADAMS. Without objection your statement will be entered into the record and you may summarize or proceed in whatever manner you wish.

Mr. MAYNE. Mr. Chairman, the Nation is again faced with actual and potential disputes between labor and management in practically every segment of the transportation sector of our economy. Transportation stoppages have vicious effects upon the whole economy, not only of a region directly affected, but also of the entire Nation.

Nothing so dismays me, and I might say my constituents, as to see bountiful harvests of corn and soybeans piled high in the middle of Iowa streets, exposed to deterioration as local, regional, or national transportation labor disputes prevent the normal flow of commerce. I am sure it is equally frustrating to feed-deficient areas that they cannot obtain delivery while abundant supplies are spoiling in the great feed-grain producing areas of the land.

Now I shall move over to the top of page 3. Many Iowans, operating firms big and small have been forced by the series of transportation stoppages in recent years into abrupt cutbacks in their business operations and with increasing frequency to bankruptcy.

This has also been a very heavy burden on the farmers.

We have a number of small plants in northwest Iowa who have built up their businesses through developing a good quality product, and a market for that product, with many orders and the labor force and capital goods to meet those orders. During the so-called "local" truckers strike in Chicago, which is 500 miles from Sioux City, the principal city in my district, our business people could not get parts or raw materials needed for production or to assure delivery.

Many northwest Iowans called me during the Chicago truck strike and during the various railroad strikes which paralyzed our northwest Iowa economy to a very great extent. They were desperate for materials and were being forced to lay off employees or to close their doors. Many survived only through massive layoffs in the end, or were forced into bankruptcy or into forced fire sales to big outside corpora-

tions. Each dislocation of transportation channels through strikes and lockouts has taken its toll in the economy of northwest Iowa.

Much has been said about the reasons for the deterioration of American railroads and the plight in which they are today—but in my mind the greatest factor in more and more Americans turning from railroads to trucking—especially their own trucks, as evidenced in the substantial increase in farm-to-market trucking by farmers, for example—has been the increasing inability of farmers and businessmen to have confidence in railroads delivering the goods on schedule because of the danger that delivery will be disrupted by still another labor-management dispute.

It is not good economics and may in time produce a sort of anarchy within our transportation system, but many businesses feel forced to acquire and operate their own trucks to insure reliability of transportation for their raw materials and products, even though those trucks are used perhaps only a few hours or days each week or only occasionally during the year.

It is ridiculous for this Nation to tolerate continued transportation disputes so disruptive and injurious to our national interests, and indeed detrimental to the short- and long-run interests of transportation labor and transportation management alike. I do not contend the "Emergency Public Interest Protection Act of 1971" offers an immediate panacea, but it does, in my estimate, provide our best hope for legislative remedies capable of enactment during this session of the Congress.

Now I am going to page 8.

Gentlemen, further I submit that the "Emergency Public Interest Protection Act of 1971" would be improved if amended to authorize the same procedures in the case of regional emergencies caused by strikes or lockouts in the transportation industry as would be authorized in national emergencies.

The Chicago truck strike was principally in Chicago and a few other truck terminal cities last year, and was not a national strike. Yet this strike had adverse effects throughout the Nation and forced many businesses throughout the Middle West into dire straits, some into bankruptcy.

I am especially concerned in view of recent decisions regarding so-called selective strikes, which conceivably could paralyze substantial areas of this Nation without falling under the definition of "national emergency disputes" as limited by NLRB rulings and court decisions.

Now I am going over to page 10.

Mr. Paul Beck of Sioux City, Iowa, a resident of the Sixth Congressional District of Iowa which I have the honor to represent in this Congress, and the chairman of the board of Sioux Transportation Co., has been a serious student and observer of the transportation stoppage crisis. He has prepared a statement for this subcommittee which I respectfully request be made part of the record of these hearings immediately following my testimony and be considered by the subcommittee.

Mr. ADAMS. Without objection it is so ordered.

(See p. 194.)

Mr. MAYNE. Mr. Chairman, the 11 States which make up America's heartland—Arkansas, Colorado, my own Iowa, Kansas, Minnesota,

Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas—joined in establishing the Mid-America Governors' Transportation Council. The council has taken responsibility in transportation matters of concern to its members. Also all of the members are appointees of the Governors of these respective States.

Collectively, the States represented by the council have 34.4 percent of the Nation's railroad mileage, 27.8 percent of its public airports, and 34 percent of its surfaced roads and street mileage. The council was established in recognition of the common interest in, and concern with, transportation as a major factor in the economic future of the member mid-America States.

John P. Doyle, chairman of the Mid-America Governors' Transportation Council, a widely recognized expert in the field of transportation, had hoped to be able to appear and present detailed testimony analyzing the legislation before the committee. He is unable to attend these hearings and has asked that I submit to the subcommittee and insert a copy of the resolution of the Mid-America Governors' Transportation Council. It is quite brief and I request it be inserted in the record of the hearings and that the views expressed by the council be given the subcommittee's consideration.

(See p. 195.)

Mr. MAYNE. Mr. Chairman and members of the subcommittee, in closing I believe the "Emergency Public Interest Protection Act" with the amendments I suggested would greatly support and strengthen free collective bargaining in this Nation. It provides an effective approach which will provide for a minimum of Government interference with free collective bargaining and yet provide a range of options which the President could pursue in protecting the Nation's health and safety.

I urge that the subcommittee take prompt and favorable action on this legislation, assigning it highest priority.

Thank you, Mr. Chairman.

(Mr. Mayne's prepared statement and attachments follow:)

STATEMENT OF HON. WILEY MAYNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. Chairman and Members of this distinguished subcommittee, I sincerely appreciate your affording me this opportunity to appear before you and testify on behalf of the earliest possible reporting and enactment into law of "The Emergency Public Interest Protection Act."

I cosponsored the introduction of this legislative proposal, requested by President Nixon, in the 91st Congress. On the opening day of the 92nd Congress, I reintroduced the language of that bill, updated for this Congress, as H.R. 901. President Nixon renewed his request for this legislation, with slight modifications, before the present Congress, and I joined in cosponsoring H.R. 3639 and H.R. 4116, identical to H.R. 3596 which was introduced by this Subcommittee's parent Committee chairman, Congressman Staggers, with cosponsorship by ranking minority member Congressman Springer. I am pleased that the Subcommittee is holding hearings on this legislation, and I urge this Subcommittee to expedite its consideration and enactment as soon as possible.

The nation is again faced with actual and potential disputes between labor and management in practically every segment of the transportation sector of our economy. Transportation stoppages have vicious effects upon the whole economy, not only of a region directly affected but also of the entire nation.

Nothing so dismays me, and my constituents, as to see bountiful harvests of corn and soy beans piled high in the middle of Iowa streets, exposed to deterioration, as local, regional or national transportation labor disputes prevent the

normal flow of commerce. I am sure it is equally frustrating to feed-deficient areas that they cannot obtain delivery while abundant supplies are spoiling in the great feed-grain producing areas of the land. Who would not be dismayed by the sight of fresh produce—fruit, milk, eggs, vegetables, rotting despite the efforts to can, dry or freeze all that can reasonably be processed, for failure of our transportation system to do the job, while millions in our cities face climbing prices and in some cases an actual insufficiency of food. Billions, in welfare payments, food stamps, strike checks and unemployment benefits, mean little if there is no food to buy.

Iowans are not easily discouraged. The Iowa farmer may seem a die-hard pessimist as he grumbles about prices, and most particularly about the weather—and certainly there is indeed much to grumble about in both cases—but some spring, the real nature of the Iowa farmer as an incurable optimist shines through as the farmer once again prepares the soil and plants anew. Our Iowa businessmen do not easily give up, either. It takes a lot of hardship to force an Iowan to admit he is licked—but gentlemen, many Iowans, operating firms big and small, have been forced by the series of transportation stoppages in recent years into abrupt cutbacks in their business operations and with increasing frequency to bankruptcy.

We have a number of small plants in Northwest Iowa who have built up their businesses through developing a good quality product, and a market for that product; with many orders and the labor force and capital goods to meet those orders. During the so-called "local" truckers strike in Chicago, they could not get parts or raw materials needed for production or to assure delivery. Many Northwest Iowans called my during the Chicago truck strike and during the various railroad strikes which paralyzed our Northwest Iowa economy to a very great extent. They were desperate for materials and were being forced to lay-off employees or to close their doors. Many survived only through massive lay-offs in the end, or were forced into bankruptcy or into forced fire-sales to big outside corporations. Each dislocation of transportation channels through strikes and lockouts has taken its toll in the economy of Northwest Iowa.

Much has been said about the reasons for the deterioration of American railroads and the plight in which they are today—but in my mind the greatest factor in more and more Americans turning from railroads to trucking—especially their own trucks, as evidenced in the substantial increase in farm-to-market trucking by farmers, for example—has been the increasing inability of farmers and businessmen to have confidence in railroads delivering the goods on schedule because of the danger potentiality that delivery will be disrupted by still another labor-management dispute. It is not good economics theoretically and may in time produce a sort of anarchy within our transportation system, but many businesses feel forced to acquire and operate their own trucks in order to insure reliability of transportation for their raw materials and for their products, even though those trucks are used perhaps only a few hours or days each week or even only occasionally during the year.

It is ridiculous for this nation to any longer tolerate continued transportation disputes so disruptive and injurious to our national interests, and indeed detrimental to the short and long-run interests of transportation labor and transportation management alike. I do not contend the "Emergency Public Interest Protection Act of 1971" offers an immediate panacea, but it does in my estimate provide our best hope for legislative remedies capable of enactment during this session of the Congress.

We have seen that the emergency strike provisions of the Railway Labor Act which now govern railroad and airline disputes do not effectively protect the national interest in obtaining minimum dislocation of transportation. The "Emergency Public Interest Protection Act of 1971" abolishes the emergency strike provisions of the Railway Labor Act which now govern railroad and airline disputes and instead builds upon the solid foundation of the Taft-Hartley Act, providing additional procedures for transportation industries including railroad, airline, maritime, longshore and trucking, where existing procedures have too often failed to induce the parties to resolve their differences.

This legislative proposal strives for procedures which both reduce the number of disputes reaching critical proportions and offer the Government greater flexibility in dealing with those labor-management disputes that persevere despite settlement pressures. The proposed procedures hopefully will discourage parties from thinking that they might profit from governmental intervention. The procedures should also ensure that governmental action, when unavoidable,

is not precipitous and is not more than the minimum essential to protection of the public interest.

The President would have three major new procedures or options for dealing with transportation disputes not settled within the 80-day "cooling-off" period authorized by the Taft-Hartley Act. These include extending the "cooling-off" period for up to 30 days, the appointment of a special board of three impartial persons to determine under what conditions partial operation of the affected transportation industry is possible and feasible, and the appointment of an impartial panel to select and make binding the most reasonable final offer submitted by a party to the dispute.

These approaches are most workable and most likely to promote a favorable climate for the continuance of collective bargaining.

As Under Secretary of Labor Laurence H. Silberman stated in an address on March 18th before the Industrial Relations Research Association in New York City, the bill would allow only one of these three alternative procedures—extended cooling-off; partial operation; or final offer selection—to be chosen. "No pyramiding would be allowed." I submit that the bill would be substantially improved by giving the government even greater flexibility in dealing with emergency disputes, by enabling the President to use one, two, or all three of the options, in such order as he may choose and without use of any one being a pre-requisite to the use of one or both of the other options. Certainly the President should not be forced to use the final offer selection alternative immediately upon expiration of the 80 day cooling off period just because his choosing either the additional 30 day cooling off period or the partial operation alternative would foreclose his utilizing the final offer selection alternative when the other two options prove unsuccessful. All three options should be kept open by amending Page 4, line 16 of the bill to delete ", but only one,".

In any case, the possibility of the President choosing to exercise his option for final offer selection should remain despite his previously resorting to the additional cooling off period or the partial operation alternative—otherwise failure of those two options to accomplish settlement may result in major transportation stoppages through strikes and lockouts, with the Congress again having to step in to legislate on an ad hoc basis. That's no way to run a railroad or a country. Usually the legislative action merely postpones a strike or lockout deadline, and within weeks another strike over the same issues which precipitated the last one, looms as a distinct possibility.

The American people cannot, and will not, any longer tolerate government by crisis—and they should not be asked to do so.

Gentlemen, I further submit that the "Emergency Public Interest Protection Act of 1971" would be improved if amended to authorize the same procedures in the case of *regional emergencies* caused by strikes or lockouts in the transportation industry as would be authorized in national emergencies.

The Chicago truck strike was principally in Chicago and a few other truck terminal cities last year, and was not a national strike—yet this strike had adverse affects throughout the nation and forced many businesses throughout the Middle West into dire straits, some into bankruptcy. I am especially concerned in view of recent decisions regarding so-called "selective strikes," which conceivably could paralyze substantial areas of this nation without falling under the definition of "national emergency disputes" as limited by N.L.R.B. rulings and court decisions.

Mr. Chairman, the latest "Analysis of Work Stoppages" available from the U.S. Department of Labor's Bureau of Labor Statistics is for the calendar year 1969—yet in that year 38,300 workers were idled for 117,400 man-days through 11 major railroad transportation work stoppages. 18,000 workers lost 346,800 man-days during 73 strikes involving local and suburban transit and interurban highway passenger transportation. 13,400 workers did not work for 139,500 man-days in motor freight transportation and warehousing because of 73 disputes in that segment of the transportation industry. 56,300 employees lost 561,500 man-days in 14 major air transportation strikes. 14,100 workers in water transportation were idled by 33 disputes in that field, losing 1,936,000 man-days. 1,100 workers engaged in transportation services lost 9,200 man-days in 1969 through 9 strikes in that industry.

I am sure the statistics for 1970 and 1971, when finally compiled and published, will show even further loss of man-days in the transportation industry, a loss to our national economy and to the individual workers and employers involved that to a considerable extent could have been avoided had the "Emergency Public

Interest Protection Act" before the Committee been enacted earlier. These statistics do not take into account the millions of Americans idled because of inability of their employers to obtain raw materials and parts necessary for continuation of manufacturing processes employing them, or by the inability of their employers to move products to would-be customers because of transportation stoppages.

Mr. Chairman, Mr. Paul Beck of Sioux City, Iowa, a resident of the Sixth Congressional District of Iowa which I have the honor to represent in this Congress, and the Chairman of the Board of Sioux Transportation Company, has been a serious student and observer of the transportation stoppage crisis. He has prepared a statement for this Subcommittee which I respectfully request be made part of the record of these hearings and be considered by the Subcommittee. (See p. 194.)

Mr. Chairman, the eleven States which make up America's heartland—Arkansas, Colorado, my own Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota and Texas—joined in establishing the Mid-America Governors' Transportation Council. The Council has taken responsibility in transportation matters of concern to its members. Collectively, the States represented by the Council have 34.4% of the nation's railroad mileage, 27.8% of its public airports, and 34% of its surfaced roads and streets mileage. The Council was established in recognition of the common interest in, and concern with, transportation as a major factor in the economic future of the member Mid-America States.

John P. Doyle, Chairman of the Mid-America Governors' Transportation Council, a widely recognized expert in the field of transportation, had hoped to be able to appear and present detailed testimony analyzing the legislation before the Committee. He is unable to attend these hearings, and has asked that I submit to the Subcommittee and insert a copy of the resolution of the Mid-America Governors' Transportation Council. I herewith respectfully request that the Council's resolution be inserted in the record of the hearings and that the views expressed by the Council be given the Subcommittee's consideration. (See p. 195.)

Mr. Chairman and Members of the Subcommittee, in closing I believe the "Emergency Public Interest Protection Act" with the amendments I suggested would greatly support and strengthen free collective bargaining in this nation. It provides an effective approach which will provide for a minimum of government interference with free collective bargaining and yet provide a range of options which the President could pursue in protecting the Nation's health and safety. I urge that the Subcommittee take prompt and favorable action on this legislation, assigning it highest priority.

STATEMENT OF PAUL BECK, CHAIRMAN OF THE BOARD, SIOUX TRANSPORTATION CO., INC., SIOUX CITY, IOWA

Gentlemen: I want to thank the Honorable Wiley Mayne and you for making it possible for me to make this statement to you. The matter of strikes by labor unions in general and more specifically unions controlling all of the transportation industry has become the nation's greatest deterrent to progress, and the prime reason for the continued higher inflation in the face of a deepening depression.

Congress itself must accept the principal blame for the attitudes that prevail in organized labor, first by their failing into the trap set by President Johnson, the 41% Congressional salary increase, which set the pattern for the unreasonable demands of the unions, and second, by failing up to this time to enact strong, meaningful, effective legislation to curtail the power of organized labor. This, gentlemen, is the opportunity you face right now, the opportunity to correct your past mistakes, the opportunity to save the economy of the nation and the welfare of the working man from the devastation created by big unions to the economy of the nation.

The recent admission by Paul W. McCracken, Chairman of the Council of Economic Advisors, that it would be "irresponsible" for the administration to reach its original economic growth goals for 1971, only points out the cost of Congress' failure to accept its responsibility to put effective restraints on excessive union demands.

What is generally known by every one, but is very rarely ever spoken aloud, is the fact that excessive union demands are usually backed up by union violence, which is either frequently overlooked by local law enforcement agencies, or if the culprits are apprehended, dragged on interminably through the courts, with

punishment eventually watered down or actually eliminated. But never, or very rarely is any action taken against a union, and damages collected. H.R. 901 or H.R. 3639, or H.R. 4116, should be amended to provide that any act of violence committed during a labor dispute should be accepted by any court, as prima facia evidence as being committed by the union and damages should be collected from the union, because most acts of violence are planned, and some are committed by the officers of the unions involved, while all the time they publicly deny any connection with the violence.

These bills, H.R. 901, H.R. 3639, and H.R. 4116 are all basically good bills as far as they go, but I strongly feel that the bill that is finally adopted should contain another amendment and that is to incorporate Senator Jack Miller's S. 3852 introduced May 19, 1970 into this bill to make it apply on a regional basis. The disastrous truck strike of last year makes such an amendment an absolute necessity as the entire country suffered losses going into the billions of dollars in this strike even though the strike was principally in Chicago and a few other truck terminal cities. This Chicago strike was felt adversely nationwide and as the result, businesses as far away as Winston-Salem, North Carolina and other distant places were forced into bankruptcy. We damn near became a casualty of that strike ourselves, and haven't yet recovered from its effects.

One other amendment that should be put into the bill that you adopt, is to make all unions subject to the anti-trust laws. With the bigness of many unions, the multibillion dollar resources they control, they pose a greater threat to the American Economy and the American way of life than does any monopoly of business.

The working man is aware of what the union bosses are doing to him by taking as much money out of his pocket by inflation and dues as the new contracts are putting in, plus the time he is losing during strikes promoted by the union bosses, (our Chicago drivers lost nearly $7000 each in the 3 months Chicago strike), plus the added taxes he is paying on his income and everything he buys and I am sure that in most cities that the union bosses can't and don't control the vote of their members, and their members, your constituents, would be glad to have you come out publicly in support of controls on their union bosses. Some politicians might lose some financial backing by some unions, but the rank and file would still support the man who will try to save the nation, and the jobs that support the nation. This has been proven in areas where the unions have spent millions to defeat a candidate, only to lose the election. H.R. 901, H.R. 3639 and H.R. 4116 are particularly important because of the fact they relate to transportation, the one service that really effects the costs of every last item that everyone uses, and this is the reason that is so important to get a bill with the above provisions enacted into law, now!

I sincerely hope you will favorably consider the suggestions I have made and I want to again thank you for permitting me to be a part of this record.

MID-AMERICA GOVERNORS' TRANSPORTATION COUNCIL,
College Station, Tex., July 13, 1971.

A RESOLUTION

Whereas the trend of several years in transportation labor disputes has been to substitute congressional action for collective bargaining; and,

Whereas the Congress is ill-equipped to resolve specific labor disputes on an ad hoc basis, in the heat of the controversy, with fairness and objectivity to all concerned, especially to the general public; and,

Whereas the national economy and the interest of the member states of this Council are irreparably damaged by transportation work stoppages; therefore, be it

Resolved, That the Mid-America Governors' Transportation Council considers imperative the enactment of permanent legislation to prevent interruptions of interstate transportation service incident to strikes or lock-outs in the transportation industry by mandating some form of compulsory arbitration; and further,

Resolved, That a copy of this resolution be transmitted to each member of the Congressional delegation of the member states; to the Secretary of Transportation; to the Secretary of Labor; and to the President of the United States.

Mr. ADAMS. Thank you very much, Mr. Mayne. We were very pleased to have you here to make your excellent statement.

Mr. Harvey.

Mr. HARVEY. Thank you very much, Mr. Chairman.

I, too, would like to congratulate you, Mr. Mayne, on a very fine statement. I think you have placed your finger on one of the areas of difficulty that this committee is going to have, that is, achieving a balance between the rights of the parties, the rights of the working man, the rights of management, and, as you very well pointed out, the rights of the public.

I am not certain I agree entirely with everything you say. I am not certain that we should not allow any strikes whatsoever, as your statement would seem to imply. In that regard, I point out, for example, in the State of Michigan, where automobiles are the major industry, we do have strikes in the auto industry such as the one last year which was probably more devastating than many, many railroad strikes could possibly have been.

So it is difficult to distinguish between the one industry, the auto-making industry over here, and the railroad industry over here, to the extent that you say, that is, we can't tolerate any strikes at all in the industry, but I am complimenting you and you pointed out very well, as I say, the interest the public has in this and what can happen and how they suffer when these strikes take place.

Mr. MAYNE. Mr. Harvey, I did not mean to give the impression that under no circumstances would a strike be appropriate. I do think, however, that long strikes, which are not resolved after a reasonable interval of time, when they affect the national interests, are intolerable.

Mr. ADAMS. I think there is agreement, then, because the committee is only concerned with strikes which affect the national interest even though some of the other strikes can be devastating, indeed, but it must still affect, as I understand it, the national health and safety and national flow of commerce.

Mr. MAYNE. This is why I am particularly attracted to the "final offer selection" provision of the administration's proposal, because it seems to me that that would install a terminal feature to what now seems to be an interminable deadlock in many instances.

Mr. ADAMS. I share your feeling and your enthusiasm for that provision and I thank you very much for coming here and presenting a very fine statement.

Mr. MAYNE. Thank you, and thank you, Mr. Chairman.

Mr. ADAMS. I have one question, Mr. Mayne.

You mentioned several times the Chicago local truck strike. You also mentioned that you had some question about the selective strike portion of the bill that has been recommended in the so-called arsenal of weapons approach. Isn't there any other competitive means of transportation in the area you mentioned so that goods can be shipped by one means as opposed to another, if one of the means is on a strike?

Mr. MAYNE. Well, the only means for bulk transportation between those communities along the Missouri River and Chicago, which is a distance of about 500 miles, are the railroads and the trucks, and a very large amount or much of this business moves by truck; and the rail service, in many of the smaller communities, has deteriorated to the standpoint where there is no pickup service in the small communities

and it has to be brought by truck into a terminal like Sioux City to even be loaded onto the trains.

So that Chicago Terminal's strike in the trucking industry really paralyzed movement to small factories all through the Midwest.

Mr. ADAMS. One of the problems we have is that we do not have and are not asserting jurisdiction over the trucking industry. This is because the trucking industry is covered under the Taft-Hartley Act, which comes under the jurisdiction of the Education and Labor Committee. We only have jurisdiction over the Railway Labor Act, which covers the airlines and the railroads. One of the questions that is before the committee is whether strikes should be limited so that alternative rail service is available; in other words, that one could not strike all of the rail lines in an area.

Mr. MAYNE. Well, perhaps there could be some provision that would require the railroads, when the trucking industry was shut down, to begin providing the kind of pickup and delivery service that they used to afford to the smaller communities, but it just does not exist now.

For example, my hometown of Sanborn, Iowa, with a population of about 1,300, where I was born, used to have daily delivery and pickup service several times a day by the railroads, but there is no such service any longer. The businessmen and farmers of that area have to truck their produce and pick up their stores from places like Sioux City, which would be a considerable distance away.

The railroad service is no longer there and when the trucking service is taken away, they are just paralyzed.

Mr. ADAMS. Well, this is another subject that the committee, we hope, will address itself to this year. A number of us are working on legislation concerning the economic health of the railroad industry, because we feel that the problem you mentioned, of the railroad industry no longer carrying out the functions, particularly for the smaller shippers, that it did a number of years ago, may be an economic problem as well as perhaps a labor-management relations problem.

Mr. MAYNE. Thank you, Mr. Chairman.

Mr. ADAMS. Mr. Kuykendall, any questions?

Mr. KUYKENDALL. It is good to have you here, Mr. Mayne. Have you given any study as to how much of your State of Iowa or the 11 mid-American areas which you suggested, what proportion of the agriculture industry are within areas that are on only one rail line? In other words, how much of the area is served by one rail line or is a monopoly area in which it would be 100 percent effective even though the region might not be but 20 percent struck?

Mr. MAYNE. No, I have not made a study of that. I think it would be difficult to determine. There are some of these rural areas that have more than one railroad passing through them, but service may have dried up so on one line, they may have abandoned the field pretty much to another, so that from a practical standpoint it is a monopoly.

Mr. KUYKENDALL. I think you will agree that when all of us here in this room and I look around and see Members of Congress and members of labor and management, and no one here says that this country today can tolerate a national transportation strike. This is general agreement.

No leader of a transportation union would be so unwise as to say that he thinks this can continue indefinitely, so what we really get down to is a final system of negotiation and then a conclusion that is workable, and I started to say "acceptable to both sides," but I don't know if there will be anything that is acceptable to both sides. But how do you finally settle a dispute when the parties cannot agree?

I think you will agree that is what this whole discourse is about. Do you find the different approaches in the legislation offered up to now as offering anything which you think holds some hope for a different approach here?

Mr. MAYNE. Well, as I said in my colloquy with Congressman Harvey, we have this situation.

Mr. KUYKENDALL. Have you discussed this before?

Mr. MAYNE. No; but I am particularly impressed by the "final offer selection" technique. I have participated in a good many labor-management negotiations myself before coming to the Congress, that is, as an attorney, and it does seem to me that this gets around this gimmick of each side giving an unrealistic offer or demand, the thing here which plagues the negotiations over and over again and for all practical purposes it obstructs their making progress.

This final offer selection feature is something that is eminently fair, but it is decisive and it would bring this stalling by both sides, this going on and on and on to the end to what seems to me to be an appropriate manner. If nothing else survives from this proposal, or the various proposals offered by Members of Congress in the last few years, I hope this feature will be written into law with real teeth in it, because that would be real progress.

Mr. KUYKENDALL. I am reminded when we were children and you or your brother, sister, or friend had one apple. Did you ever have your mother, or see someone, let one child cut the apple and the other person take his choice as to which half he wanted? It always seemed to work beautifully.

One side would split the apple and the other side took whatever half he wanted, and this seems to bear some of the benefits of that same thing, that each side has to be responsible for the results of his own action.

So, in this case, they are going to have to offer solutions that everyone can live with.

Mr. MAYNE. Yes: thank you and thank you, Mr. Chairman.

Mr. ADAMS. Thank you very much, Mr. Mayne.

The next witness is the Honorable Victor Veysey from California. We are pleased to have you appear.

STATEMENT OF HON. VICTOR V. VEYSEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. VEYSEY. I thank you very much, Mr. Chairman, for giving me the opportunity to testify before this committee and I would like to ask your permission to revise and extend my remarks for purposes of the record.

Mr. ADAMS. Without objection it is so ordered.

Mr. VEYSEY. My remarks will be short and pointed here today. They are aimed simply at emphasizing the effect of the current railroad dispute upon my congressional district and upon California.

A great deal has been said here today by very competent spokesmen about the details of the proposed legislation before this committee. But, Mr. Chairman, the time is long overdue for this Congress to act decisively by passing permanent legislation to prevent the kind of economic disaster that the current rail strike is bringing to my congressional district and to many other parts of the Nation.

It has been determined by someone that the selective strike does not constitute a national emergency and that, therefore, emergency legislative action is not justified. I can only point out to you that to the agricultural community in California's 38th Congressional District and, indeed, throughout the State, that argument has no relevance. That community is suffering all of the adverse impacts of a general strike. There is or will shortly be no rail service.

The Union Pacific, as you know, was the first called out on strike. Then last Friday the Southern Pacific Railroad went out on strike and I understand, as of today, the Santa Fe Railroad is embargoing the receipt of any perishable materials on their line and they will be out as of Friday.

Now, those three major lines are the sole rail service in a whole quadrant of the United States. All of the southwest area and the entire State of California is in a very perilous condition as a result. In Imperial County, my home county, there are 75,000 to 80,000 tons of sugar beets right now rotting in the ground because of no railroad being available to carry them to the refinery, and it represents about $1.25 million to the farmers in the county and perhaps about $3 million in our total agricultural business community. It represents a lifetime savings and perhaps the entire future to hundreds of farm families.

Let me explain that in this particular area, because of the hot summer, the sugar beets simply cannot survive the August temperatures, which run as high as 115 degrees. As a result, if the beets are not out in the first weeks of August, they are not going anywhere.

We have one factory supplied by truck in the immediate vicinity, but three or four other sugar refineries must be supplied by rail.

In Riverside County, the story is much the same for citrus growers and for thousands of people, both in my district and out, who depend on the citrus industry for their survival.

I am told that the grapefruit crop is dropping from the trees. It is in great demand on the housewives' table and I was even told if those grapefruit can be shipped some way to Tokyo, they are worth a dollar apiece on that market. There is no way to get them there.

Throughout the State of California this disaster is multiplied many times over and the impact will be felt nationwide as supplies of fresh agricultural products begin to dry up. We are on the end of a long supply line, but surely the lettuce and other fresh vegetables and fruits will not be flowing to the major markets in the East.

Furthermore, this country cannot afford more ad hoc legislation. The solution to strike situations like this one, where the national economy and interests are adversely affected, must be permanent machinery which protects the public interest while guaranteeing the disputing parties equal protection.

I strongly support the provisions and intent of H.R. 8385, Representative Harvey's legislation, which would deal constructively with

this and with similar situations. It seems to be it would give the President latitude which could have prevented the current crisis.

It deals fairly with both management and labor while protecting the public interest and it would eliminate the need and demand for more ad hoc legislation. I urge Congress to live up to its responsibility and to enact a modern replacement for the failing mechanism of the Railway Labor Act, otherwise this legislative body may be in the business of running the country's railroads on a day-to-day basis.

I thank you very much, Mr. Chairman.

Mr. ADAMS. Thank you very much, Mr. Veysey.

Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Veysey, and thank you also for the support for the legislation that we have both introduced. I thought you would be interested to know, if you were not here this morning during the hearings, that in computing the revenue-ton-miles or the load capacity of the various regions of the country that are affected by these strikes, the western region is indeed, as you point out in your statement, very seriously affected.

Just with the carriers on strike at the present time, more than 30 percent of the load-carrying capacity of the western region is already affected. That is simply by the Union Pacific and Southern Pacific Railways themselves. By this Friday, additional lines which are scheduled to go on strike in the western region will raise that figure up to 43 percent.

By August 6, the date that the Congress is scheduled to go in recess, as I pointed out, just in the western region alone, which you talked about in your statement, that figure will go up to 55 percent, which, as I might point out, is almost three times what we would classify as a reasonable selective strike in the legislation we were talking about.

I thought you might be interested in those figures. I congratulate you for your fine statement and for the concern you have for your constituents on that matter.

Mr. VEYSEY. Thank you, Mr. Harvey, for that information. That is a very impressive fact, but I can tell you as far as huge areas of the State of California are concerned, there is just no rail transportation available at the present time and consequently there is just no alternative in getting some of these crops out.

Of course trucks are being used and have been used to a great extent, but there is just no possibility that they can move the produce, no way.

Mr. HARVEY. I am sure, if I could say this—I am sure you are correct in some areas there is a 100-percent effect on those particular areas.

Mr. VEYSEY. Yes, sir.

Mr. HARVEY. I was citing the entire western region of the country running all the way from the carriers in Duluth, Minn., right on out to the west coast.

Mr. VEYSEY. Thank you.

Mr. ADAMS. Thank you, Mr. Harvey.

Mr. Kuykendall.

Mr. KUYKENDALL. It is good to have you with us. I don't believe I have any questions.

Mr. ADAMS. Thank you. I have a question of you, Mr. Veysey.

Suppose the matter stayed where it was at the present time with the Union Pacific and Southern Pacific out, but the Santa Fe con-

tinuing to operate. Would the Santa Fe railroad, together with a truck service, provide a competitive system sufficient to move the goods out of the southwestern area?

Mr. VEYSEY. Well, I cannot speak for all of the southwestern area with any authority, but for my own district the entire agricultural area of Imperial County is served exclusively by the Southern Pacific railroad, so there is no other way to go there.

Now, through the Central Valley of California there would be an alternative of the Santa Fe where produce could be trucked maybe a few miles or quite a few miles to get to the Santa Fe railroad if it could handle the load and if they did not go on strike.

Basically, in the southern part of the State I think Southern Pacific would be the main line of reliance in most of the agricultural area.

Mr. ADAMS. Thank you very much, Mr. Veysey, for coming to present us with your statement. We appreciate having seen you.

Our next witness is the Honorable Fred Schwengel, of Iowa.

Welcome to the committee, Mr. Schwengel. We are pleased to have you here.

STATEMENT OF HON. FRED SCHWENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. SCHWENGEL. Thank you, Mr. Chairman. It is a pleasure to have this opportunity to come here and talk about some of these important questions that are facing our Nation today.

I want to commend this committee for taking some leadership and for holding these hearings and I hope that something can be worked out that will work in the public interest and in the interest of what I call the fifth great freedom—the freedom of movement of men and goods.

I suppose it is academic to say there is no doubt that transportation strikes constitute a grave danger to the American economy. Unlike strikes in other essential industries, a transportation strike is felt immediately by many innocent people. Transportation services cannot be stockpiled like steel or automobiles. A railroad work stoppage immediately impedes mail delivery, shuts down business, destroys perishable goods, strands commuters, and threatens our national security.

An airline stoppage strands travelers, holds up shipments of vital drugs and seriously weakens our balance-of-payments position, a point not often made. A prolonged railway strike can shut down such vital industries as auto maunfacturing, construction and even publishing. No sector of the economy is immune to the effects of a railroad strike.

Former Senator Wayne Morse has estimated that a monthlong railroad strike could throw 6.5 million people out of work. Compare this figure with the fewer than 600,000 nonstrikers who were temporarily thrown out of work by last year's General Motors strike. These 6.5 million unemployed are innocent people whose well-being is seriously threatened by a dispute over which they have no control and most of them would benefit very little from it.

Obviously, it is not fair that we should permit a labor dispute to throw millions of innocent people out of work. We must create and pass laws to protect the public against dangerous labor disputes.

In 1926 Congress passed the Railway Labor Act to protect the Nation against paralyzing railway strikes. It was later amended to include airlines. The act gives the President the power to arrange conferences between labor and management, refer the dispute to the National Mediation Board (NMB), propose and arrange voluntary arbitration and, if all else fails, appoint an emergency board to study the dispute and make recommendations to the President.

The board studies the problem, as you know, for 30 days after which a 30-day freeze period is mandatory. After this 60-day period work stoppages are permissible.

The Railway Labor Act in recent years has failed and is failing to to provide the necessary apparatus to solve transportation disputes through collective bargaining. In the last 30 years the use of arbitration has declined while the use of emergency boards has skyrocketed. Between 1926 and 1934, 533 disputes were successfully arbitrated. Only 10 emergency boards were created. In the period 1934–1962 only 270 cases arbitrated while the use of emergency boards went up accordingly.

Unfortunately the emergency board procedure has become increasingly inadequate. The boards are not given enough time to fully study the dispute. Furthermore, the heavy outside commitments of most members of the boards restricts the scope of their research. Finally, management and labor cloud the issues by inundating the board with an overabundance of extraneous information.

But the biggest problem with the board is that its findings are only recommendations. They are almost never accepted. Instead, labor and management just use these findings as a floor to start serious bargaining. At least 30 days are wasted in what has become sham negotiations. If serious bargaining were to take place at the beginning of mediation, progress could be made before a stoppage became imminent.

Nevertheless, the worst features of the act is the limited options it gives the President. After the board has submitted its findings and real negotiations have hopefully begun, the President has no further statutory power. He can only keep on jawboning, appoint an ad hoc emergency board, or introduce ad hoc legislation in Congress. Congress is the only agency that can effectively protect the public interest.

Since 1963, Congress has been forced eight times to pass ad hoc legislation to prevent transportation stoppages. In 1963, Congress had to resort to compulsory arbitration to settle a dispute between the railway firemen and management. Increasingly, congressional action has become necessary to protect the public from the disastrous effects of a railway strike. The Railway Labor Act has clearly failed.

Yet Congress is a particularly poor mechanism for solving railroad disputes. Debate usually consists of partisan arguments taken from both sets of negotiators reinforced by edited quotes from the Emergency Board's report. The emotionalism and lack of time for exhaustive study on the part of Congress coupled with the complexity of the numerous issues involved make congressional arbitration uninformed at best.

Congress cannot and should not be the arbitrator of labor disputes. The present pattern of transportation disputes in which collective bargaining is just a facade for political advantage must end. The wel-

fare of the entire Nation should not be manipulated by labor and management for their own selfish purposes. Labor disputes are best solved at the bargaining table or, if necessary, by experts of an impartial Government agency. Congress must give the President the necessary tools to restore some order to the transportation bargaining process.

H.R. 9089—and I am coauthor on this, under the leadership of a distinguished member of this committee, Mr. Harvey—would give the President new and additional tools to settle transportation disputes. The President would have three options under the act if the normal procedures of the Railway Labor Act were not sufficient. He could extend the "cooling off" period for another 30 days, permit only a selective strike, or he could appoint a board to choose between the final offers of labor and management. He could use those procedures in any order, but he must continue to act until a settlement is reached.

The President would probably extend the freeze period only if both sides gave him assurances that a settlement could be reached quickly. In the unlikely event that a settlement was not reached, the President could always try another option.

The selective strike procedure could be used to permit a strike while protecting the national interest by insuring that essential transportation services would still be provided in every section of the country. Selective strikes have just recently been declared legal by the Supreme Court, as the committee knows.

The act would give the President the power to regulate these strikes by stipulating how many carriers in an area may be struck and by ordering the transportation of any person or goods he feels essential to "national health and safety" if no alternate transportation could be found.

Since any contract made between a struck carrier and the union involved would be binding on all carriers in that region, the bargaining process would completely resolve the dispute in that region.

Finally, the President could create another board to choose between the final offers of labor and management. Board members would be chosen by both parties to the dispute, or, if they couldn't agree, by the President. The offer selected by the board would form the basis of the new contract. Both sides would be forced to submit reasonable offers since they could ill afford to gamble for some outrageous settlement.

One of the most important features of this option is the power it gives the Board to investigate all facets of the dispute including its effect on the welfare of the Nation. The Board could subpena vital information from both sides that is not presently available to an emergency board. By examining the figures on which the offers of both sides are based, the "final offers" board could more effectively and fairly evaluate the merits of each side's arguments.

The President could use his new powers to force both sides into serious negotiations. His most effective weapon would be the uncertainty that the act would put into the bargaining process. If the President felt that management was being uncooperative, he could threaten to use the selective strike option. If labor's demands were excessive, he would threaten to create the "final offers" board. By combining jawboning with the threat of effective action, the President could get both sides to bargain more seriously, and that is the strength

of this bill. Disputes could be solved before they became a threat to national security.

We must stop the growing involvement of Congress into transportation disputes or, for that matter, any labor dispute. Partisan politics must not become part of labor disputes. The Railway Labor Act must be amended. This committee has the power to lead us in this, so that collective bargaining can once again be the arbitrator of labor disputes in the transportation industries.

H.R. 9089 would give the President the power to move the settlement process out of the Halls of Congress and back to the bargaining table.

That is my statement, Mr. Chairman.

Mr. ADAMS. Thank you very much, Mr. Schwengel.

Any questions, Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman. I don't believe I have questions, Mr. Schwengel, but I want to compliment you on a very fine statement and a very fine contribution to the effort this committee is going to make toward reporting out such legislation and thank you for making your presentation.

Mr. SCHWENGEL. Thank you very much.

Mr. ADAMS. Mr. Kuykendall.

Mr. KUYKENDALL. Mr. Schwengel, your record in this Congress, at least since I have known you, is one of being definitely a friend of organized labor and the workingman. How do you—I won't use the word "reconcile," but I think you are certainly familiar with the fact that in the past the weakness of the board and the forced arbitration process has not been so much in the money area, which seems these days to be the easiest thing to settle, but it is in the technical details of work rules and I am sure you are familiar with the complicated nature of that, and I think the entire present situation is over the work rules and not money and, in fact, we award the most money already, but how do the processes offered under the Harvey and many other cosigners' bills change the picture as regards the welfare of the workingman on this issue of the work rules?

Mr. SCHWENGEL. First of all, I want to comment on your first observation, that I am supposed to be a labor man.

Mr. KUYKENDALL. Friend of the workingman. You don't have to be owned by anybody to be a friend.

Mr. SCHWENGEL. I am friendly to many labor people, but many labor leaders would disagree with you on your observation about my interest in that.

Mr. KUYKENDALL. I know that.

Mr. SCHWENGEL. My interest in that attitude about labor.

Mr. KUYKENDALL. I have seen your votes, too.

Mr. SCHWENGEL. In answering your question, I don't think we are impinging on anybody's right, but furnishing a vehicle to get to a solution and that is the strength of this. This is not an antilabor bill or an antibusiness bill, but this furnishes new and different opportunities that carry with it encouragement to come to the bargaining table honestly.

This is where we have had trouble, haven't we, in this area? I think it is more urgent to get into this kind of solution here because of the adverse effect that a strike has on so many innocent people, 10 times as many people getting hurt from the railroad and transportation strikes as do get hurt from almost any other strike.

I cite as an example a comparison of General Motors last year with 600,000 besides those in General Motors being adversely affected. That was a top figure, very liberal figure they tell me at the Labor Department. But we know and everyone agrees in a railroad strike of several years ago that over 6 million people were adversely affected and they were innocent and very few of them could benefit at all, and all of them could lose and did.

It is a high price to pay.

Mr. KUYKENDALL. Yes; thank you, Mr. Chairman.

Mr. HARVEY. Would the gentleman yield for an observation there?

The gentleman from Texas this morning, Mr. Eckhardt, with whom I don't always agree, nevertheless made a very profound observation when he said, "The parties themselves, whether they be labor or management, know best their own problems in the entire situation. They know it better than any arbitrator or than any lawyer could possibly know it."

This is a very true statement and it is probably the best argument that I could make for the final offer selection method of settling these disputes, because with regard to work rules that my friend from Tennessee has brought up it is true that organized labor knows their problem better than even their own lawyers or better than any arbitrator they could possibly convince, and the same is true of management and they could each probably submit their best own and final offer if given the opportunity, and I am sure they would be very, very close together in that regard.

I thank the gentleman for yielding.

Mr. ADAMS. Mr. Metcalfe.

Mr. METCALFE. No questions.

Mr. ADAMS. Thank you. One of the big places where we have trouble is that the National Mediation Board, after one of these contracts is open and all of the notices and so on are filed, sometimes takes a long period of time. For example, I understand that this particular dispute with which we are now involved has been in the making for over a year and a half. So we are constantly faced with the problem that what we are really dealing with is something which is already old.

Do you have any particular recommendations on the time schedule between the time when a contract is reopened and its final ultimate settlement?

Mr. SCHWENGEL. I think the answer to that question has to come from some experience, when you have new legislation. It is hard to anticipate exactly what the impact of this legislation or recommendation would do. We do know at the present time they have to do the very best they can in mediation. They have no powers beyond it.

They can do that and that is it.

Well, the present law just proved inadequate.

Mr. ADAMS. We don't have too great a problem under the present law with the time span between the National Mediation Board efforts, the Presidential Emergency Board efforts, and the establishment of a national strike, because there are only 30 days between each one. However, there is not a limit on the time that the National Mediation Board can spend and, of course, there is no time limit on how long management and labor would bargain before one of the other asks for the broader services of the National Mediation Board. Do you have a feel-

ing on a time limit for labor and management to bargain before the National Mediation Board enters the bargaining discussions?

Mr. SCHWENGEL. No, I don't have at this point. I would have to think about it before I would want to make a recommendation.

Mr. ADAMS. Any other questions?

I understand Congressman G. William Whitehurst has a short statement he would like to present at this time. Welcome, Mr. Whitehurst. Proceed as you see fit, sir.

STATEMENT OF HON. G. WILLIAM WHITEHURST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. WHITEHURST. Mr. Chairman, thank you for giving me the opportunity to speak on behalf of legislation aimed at bringing about equitable settlements to transportation disputes. The bill to which I refer is H.R. 9089, introduced by Mr. Harvey, which I cosponsored.

Since 1963, Congress has on seven separate occasions been forced to act to either delay or stop strikes in the railroad industry, the last time being on May 18 of this year. Congressional action is a recent event in our history in this area, and with each intercession, Congress gets deeper and deeper into the conflict. On the two most recent occasions, congressional intervention included wages settlements, agreements previously reserved for negotiation. It is time that Congress adopted permanent measures by which emergency disputes can be settled.

The legislation introduced by Mr. Harvey will, I feel, accomplish this end. It will encourage the maximum degree of reliance upon the principles of collective bargaining for the settlement of labor-management disputes. It will also protect the public interest by providing equitable procedures for settling those labor-management disputes which threaten the well-being of the Nation.

And finally, it will provide mechanisms that will eliminate the need for 11th-hour legislation by the Congress.

I hope that the committee can give this legislation favorable consideration.

Thank you, Mr. Chairman.

Mr. ADAMS. Thank you, Mr. Whitehurst, for your concise statement.

Are there any questions?

If not, that completes the witness list for today.

The committee will meet again tomorrow at 10 o'clock. At that time we will have the Secretary of Labor, Mr. Hodgson, as the first witness.

So the committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 3:05 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, July 28, 1971.)

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

WEDNESDAY, JULY 28, 1971

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will come to order.

We continue the hearings on legislative proposals introduced in the 92d Congress for settling of emergency labor disputes.

Our first witness this morning is the distinguished Member of Congress from the State of Michigan, the Honorable Elford A. Cederberg.

Welcome, Mr. Cederberg, please proceed as you see fit.

STATEMENT OF HON. ELFORD A. CEDERBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. CEDERBERG. Mr. Chairman and distinguished members of this committee, I would like to thank you for this opportunity to express my firm support for H.R. 9088, a bill granting the President several different alternatives in the effort to settle national transportation labor disputes. If similar legislation had been enacted earlier, the present crippling railroad strike would have been averted, and the need for emergency congressional action precluded.

I am proud to be a cosponsor of a bill that has prompted such an impressive number of my esteemed colleagues from both sides of the aisle to likewise lend their names in support.

The need for a definite settlement procedure in the transportation field becomes more evident each day the present strike drags on. Few industries are more vital to the simple survival of our Nation—strikes in this area impede activities as common as going to and from work, as crucial as maintaining an effective national defense. Congress has wisely chosen to intervene when such strikes begin to threaten the national welfare, but that intervention has been undertaken only on a last-minute, stop-gap basis, often after millions of dollars have been irretrievably lost and normal freight and passenger traffic badly disrupted.

The national interest demands a permanent mechanism for completely preventing these disasters—we must give the President a set of procedures that he may invoke as soon as transportation strikes

appear imminent. The Railway Labor Act has proven inadequate for dealing with previous disputes beyond a certain point, but it establishes arbitration structures far too valuable to brush aside in our haste to avoid actual strikes. This act would be an ideal vehicle for permanent settlement mechanisms erected by supplemental legislation. H.R. 9088 would be simply an addition to this present law, and would enable the President to act promptly whenever normal arbitration fails to settle disagreements.

While settlement measures must be sufficiently rigid and readily available, they must also be flexible enough to nullify any guaranteed advantages that would accrue to one party or another through deliberate negotiation deadlock. If neither interest is certain of the outcome of Government intervention, both will bargain in better faith. Thus H.R. 9088 would create three alternatives for Presidential action. Selective strikes may be allowed, limited enough to insure continued operation of vital transportation routes, significant enough to add economic impetus to further negotiations. If the President feels the parties are nearing settlement, he may call for a further 30-day cooling-off period. Or, he may invoke the unique final offer alternative, a procedure that creates a special board to review and select one plan from final bids submitted by the parties involved. The ideal resolution, of course, is one reached by the concerned interests themselves containing compromise elements palatable to all. The stakes are high in the final offer approach; high enough, we would hope, to encourage such a compromise settlement before Presidential action is necessary, but certainly high enough to discourage demands from a party so unreasonable or foolish that the selection board would be compelled to select the other party's bid.

Finally, H.R. 9088 allows any combination of these alternatives, adding even more flexibility to Presidential action, and enabling relief from undesirable consequences perhaps unforeseen at the original point of decision.

Congress has passed over far too many opportunities to establish a definite standard for transportation dispute settlements. To avoid the chaos of mass transportation stoppage, we must find a mechanism that would become operative as soon as normal negotiations had broken down. To avoid the slightest suggestion of compulsory arbitration, this procedure must be adequately flexible and open-ended. We must act now to insure that strikes like the present one will never again threaten the national interest.

I believe H.R. 9088 fully satisfies the requirements for sound emergency strike legislation, and would urge your favorable consideration of this legislation.

Mr. JARMAN. Thank you, Mr. Cederberg, for taking time out of your busy schedule to be with us this morning.

Are there any questions? If not, thank you again, Mr. Cederberg.

Mr. CEDERBERG. Thank you, Mr. Chairman, for affording me the opportunity to present my views.

Mr. JARMAN. Next we shall hear from our colleague on the full committee, the Honorable James T. Broyhill, of North Carolina.

Welcome, sir. Please have a seat.

STATEMENT OF HON. JAMES T. BROYHILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BROYHILL. Mr. Chairman, I would like to concur in the remarks of my colleague, Mr. Harvey, presented to you yesterday, in support of the legislation he has introduced to provide a workable method of settlement of rail strikes. I have joined Mr. Harvey in cosponsoring this legislation and I hope that the committee can give it favorable consideration.

I would like to add my strong views on the urgent need for the committee to take immediate action in this area. The present rail strike is having disastrous effects on many areas of the Nation, including the State of North Carolina and most of the South. The effect on these areas is the same as that of a national rail strike, and cannot be endured much longer.

The President used his powers to divert a national emergency at the time of threatened rail strikes last year. The present strike is a continuation of that dispute, but the President's authority to deal with it has expired.

The existing laws which provide the framework for settling labor disputes are outdated in their application to national transportation strikes. The Railway Labor Act was passed 45 years ago, and the Taft-Hartley law, 24 years ago. Neither law provides a method to guarantee a strike settlement, and in our present, complex, interdependent economy we cannot allow such transportation disputes to go unresolved.

Unless the Congress provides basic legislation to deal with national emergency labor disputes, it must be prepared to act more and more frequently to resolve individual crises as they arise. The Congress should not assume this role, and we must act now to provide workable legislation through which labor and management can negotiate their own differences. We must also provide the President with increased flexibility to prevent damaging work stoppages.

The President has been urging since last year that the Congress consider his legislative recommendations to update present labor laws concerning national emergency disputes. The administration, as well as many Members of Congress, have proposed legislation which has remained dormant in this committee. The Congress is to blame for dragging its feet and failing to consider these legislative proposals. I urge the committee to act swiftly to remedy this disastrous situation.

I would like to include for the record my remarks to the House of Representatives during a special order on July 22.

(The remarks referred to follow:)

LEGISLATION NEEDED TO PREVENT STRIKES IN RAILWAY INDUSTRY

The SPEAKER. Under a previous order of the House, the gentleman from North Carolina (Mr. Broyhill) is recognized for 10 minutes.

Mr. BROYHILL of North Carolina. Mr. Speaker, the Congress has been guilty of dragging its feet by neglecting to consider legislation to deal with crippling strikes in the railway industry. Thus, once again, the Nation is faced with a crisis in its railway system, with the prospect of vast unemployment looming ominously over the economic horizon. The United Transportation Union has effected a strike against the Southern Railway and the Union Pacific Railroad and although it is at present a regional shutdown, it will have just as disastrous results for these areas of the Nation as would a national strike.

If this were the first such emergency facing the Nation, lack of permanent legislation could be condoned. However, eight times since 1963, the Congress has been forced—out of necessity—to take temporary emergency measures to keep our railways in operation. Congress should have learned long ago that these temporary solutions do not work and it is more than regrettable that we have not yet formulated an effective permanent measure to settle such disputes. The present strike has been restricted to the beginning stages to the southern and western portions of the country but this geographic limit should not be a deterrent to immediate and positive legislative action to avoid the hurried, last-minute preventive measures the Congress has enacted in the past.

The necessity for permanent legislation in this field cannot be overstressed, and the effect of the stoppage of one of the biggest links in our transportation system on our economy cannot be underestimated. A look at the entire industry shows that American railroads operate 207,000 miles of line serving more than 50,000 communities—moving than 41 percent of the Nation's intercity freight. The railroads form a vital link for many industries, providing the bulk of such raw materials as lumber, chemicals, steel and paper. A stoppage of this transportation artery for only one week would result in losses to economic output representing 5.8 percent of the gross national product. Unemployment and a shorter work week are inevitably the result of these strikes. Industrial activity is just now picking up from last year's downturn. Business conditions are showing signs of definite improvement and to permit a strike like this to affect wages, working hours and employment is to jeoparadize the important gains that have been made over the past year.

Recognition of the disastrous economic impact of a transportation strike has been widely accepted. Unfortunately, the appropriate legal measures to prevent them have not. Two laws, the Taft-Hartley and the Railway Labor Act, currently provide the President with authority to forestall labor disputes before they threaten the national economy. Neither provides the mechanism that will guarantee a settlement. Under the Railway Labor Act, the President is able to postpone a strike for 60 days. The present strike had its beginnings last year and the President used his powers at that time to divert a national emergency but he no longer has legal authority to stop the strike. He can appoint an Emergency Board to hold hearings and recommend a compromise settlement and this has been done. However, one of the parties did not accept the compromise offer. The President can also call on the National Mediation Service to work with both parties in an attempt to encourage bargaining sessions to effect a voluntary settlement. The Mediation Service has been working around the clock to get the current disputing parties to agree. As this strike has so dramatically emphasized the President has only limited authority under existing laws to deal with strikes that affect the national interest.

The ineffectiveness of this kind of procedure is evidenced by the number of times a transportation crisis has been thrown into the lap of the Congress, which has hastily and temporarily terminated the strike, only to repeat the procedure several months later. The Congress has already acted three times during this past year to avert a national shutdown, the last two cases going beyond the cooling-off period. The present work stoppage is but a continuation of the strike disputes that the Congress considered last year and only temporarily resolved.

The President, by special message to the Congress, has been urging that the Congress pass new laws to eliminate the need for congressional action in railway disputes. All we have seen from the Congress in response to this plea is inaction and indecisive solutions. Just in the past months, the Nation has witnessed several threatened strikes which have emphasized the need for immediate action. On March 4, 1970, a possible nationwide rail strike was averted only hours before 48,000 workers were to walk off their jobs on March 5. Again, on December 10, 1970, a last-minute congressional compromise halted a rail strike at 2:10 a.m. And most recently, a 2-day strike was ended May 18, 1971, when President Nixon signed a strike ban, directing striking signalman to return to work.

In the last two instances, the Congress went far beyond extending the cooling-off period by law to permit the two sides to reach a voluntary settlement. In addition, the Congress has entered one side of the dispute by granting a pay increase by law. I feel that this is a highly questionable position for the Congress to take and will make it more difficult for normal collective bargaining to take place. The Congress has continually found itself at the bargaining table because it has refused to provide the guidelines these disputes need to encourage their fair solution.

The Interstate and Foreign Commerce Committee has scheduled hearings on July 27. Congressional action on these bills pending before Congress, however, should have been started long before this stage. What is most desperately needed, and I cannot reiterate this need strongly enough, is meaningful, permanent legislation which would give the President the flexibility he does not now possess to settle these crippling disputes. Many Members, including myself, have introduced legislation to this effect, and we must now set the legislative machinery in motion to find an equitable and effective method of settlement so that we will not have the specter of the shorter work-week and unemployment hanging over us or be forced into future temporary decisions by our own default.

Mr. Speaker, I include at this point an editorial comment from the Washington Post:

[From the Washington Post, July 22, 1971]

CONGRESS AND COLLECTIVE BARGAINING

"The railroad strike now under way and its threatened expansion ought to make it crystal clear that the time for Congress to completely overhaul the nation's labor laws is long past. A national rail strike—or a national strike in any of the other transportation industries—is intolerable. Yet the experience of the last few years has demonstrated conclusively that there is nothing in the existing labor laws that can produce a satisfactory settlement in such complex situations before a strike, or, for that matter, once a strike begins.

"Talking about this in London the other day, Secretary of Labor Hodgson said, quite rightly that the real question is whether free collective bargaining can survive. Some semblance of collective bargaining was maintained in the rail industry as long as there was fear on both sides of the table of what kind of settlement Congress might impose if no agreement was reached and a state of national emergency occurred. But that fear has diminished with each congressional intervention and now seems to have disappeared since Congress has never done more than merely put off to another year the really tough questions in these negotiations.

"We think that Congress should realize that it has only two options left in dealing with labor problems that can lead to strikes which are unacceptable because of the harm they would do to the national economy. One is to set itself up with the tools necessary to become a fair and final arbitrator. The other is to invent some new mechanisms which can breathe life into collective bargaining in industries, like the railroads, where it is almost dead.

"The administration's proposals, which have been before Congress for more than a year, strike us more likely to achieve that latter purpose than anything else now in sight. The most interesting and perhaps the most useful of these is the 'final offer selection' option which the President could invoke in transportation emergency situations. Under this proposal, the President would appoint a board which would decide, after hearings, which final offer submitted by management or labor would compromise the contract. The effect of this would be to force management and labor closer together—perhaps close enough to reach agreement themselves—by posing the threat that one side or the other would lose everything because its final offer was unreasonable.

"Such a device would not only provide a way out of the current railroad mess but might have provided a way through which the problems would have been settled across the negotiating table. It seems unlikely that the unions would have been so intransigent on the work rules issues if they had feared that their failure to move on these questions might have led to a contract written precisely as the railroads want it.

"The failure of Congress to act on this legislation or on some other alternative is inexcusable. The collapse of collective bargaining as we know it in the railroad indusry has been obvious for a long time. If the present strike accomplishes nothing else, it serves to remind the public that Congress is much to blame for it as the railroads or the unions by its refusal to provide some new mechanism through which these labor disputes can be resolved."

Mr. JARMAN. Thank you, Mr. Broyhill, for your thoughtful statement, and for the attachment to your statement.

Mr. BROYHILL. Thank you, Mr. Chairman.

Mr. JARMAN. Our next witness this morning is Hon. James D. Hodgson, Secretary of Labor. Mr. Secretary, it is good to have you back with us.

STATEMENT OF HON. JAMES D. HODGSON, SECRETARY, DEPARTMENT OF LABOR; ACCOMPANIED BY W. J. USERY, JR., ASSISTANT SECRETARY; AND PETER G. NASH, SOLICITOR

Secretary HODGSON. Thank you, Mr. Chairman and members of the subcommittee.

At the outset, I want to make it clear I am here today to testify on permanent legislation designed to resolve emergency-creating disputes in the transportation industry. I am not here to discuss or propose legislation to deal with current strikes. I am here to encourage fundamental legislative change, not to resolve an instant dispute.

We believe that such disputes should be given every chance for voluntary settlement by the parties involved and the chances of such settlement will not be enhanced by a public discussion here today.

So I limit my testimony to the previously established purpose of this hearing, which is to examine proposals for basic changes in the Nation's labor laws.

Mr. Chairman, I have a rather long statement and I think it contains considerable substance, but I will at some point depart from it in order to shorten my presentation.

I would like to start with the opening introductory remarks toward the bottom of the page. I call the attention of the members of this committee to the extraordinary difficulty that has been experienced in recent years in the transportation industries in general, and the railroad industry in particular, in the negotiation of collective bargaining agreements. The Railway Labor Act has proven incapable of establishing a meaningful collective bargaining atmosphere. The Taft-Hartley Act—though its record is clearly better—has not always been able to prevent all national emergency work stoppages in the sectors of the transportation industry it covers.

It is to correct these deficiencies and to provide more effective protection for the public against the harmful, disruptive effects of major work stoppages in the transportation industry that I am here today to urge passage of H.R. 3596, the Administration's Emergency Public Interest Protection Act.

To understand the critical situation in which we find collective bargaining in the transportation industry, let us look at the experience we have had over the years with the Taft-Hartley Act and the Railway Labor Act. Just how effective have these two statutes been in providing a climate for the private settlement of labor disputes in the transportation industry?

Most transportation industries, except railroads and airlines, are subject to the Taft-Hartley Act's emergency procedures. Briefly, these procedures empower the President to appoint a Board of Inquiry when he believes that a work stoppage or a threat of one imperils the Nation's health or safety. After the Board's report, the President may seek to enjoin a strike for 80 days, during which the Board makes a second finding of fact and the employees are given the opportunity to vote on the employer's last offer.

If the parties still have not resolved the dispute at the end of the 80-day period the injunction expires—the string runs out. Unless the parties voluntarily agree to continue negotiation, there will either be a strike or hasty ad hoc legislation.

In the 24-year history of Taft-Hartley, these emergency disputes provisions have been invoked 29 times. Four disputes were settled before an injunction was issued. Thirteen of the remaining 25 were settled within the 80-day cooling-off period, 12 afterward.

Of those settled after the cooling-off period, five were settled without a strike, while seven ended after strikes of varying duration. Six of the seven strikes occurred in the longshore industry, one in the maritime industry. Among these were a 3-month shutdown of Pacific coast shipping and several partial and total shutdowns of East coast ports, ranging from 10 days to 3 months.

Thus, the Taft-Hartley emergency disputes provisions warrant high marks for success, in our judgment, except for the longshore and maritime industries. They can be credited with preventing many potential work stoppages, some of which could have a deleterious effect on the health and safety of the country.

Therefore, we believe that the Taft-Hartley framework can serve as a basis upon which to build a more effective and responsive structure for handling potential national emergency disputes in the transportation industry.

In contrast, our experience with the Railway Labor Act, which provides emergency procedures for work stoppages in the railroad and airline industries, has been increasingly unsatisfactory.

When a railroad or airline and its employee bargaining representative cannot resolve their differences, the National Mediation Board may enter and assist in the negotiations. If this mediation is unsuccessful and the parties do not accept the Board's offer of voluntary arbitration, the Board officially withdraws from the case. For the next 30 days, the parties may neither strike nor lockout.

Should the Board decide that a strike or lockout in the dispute would threaten major disruption to essential transportation services either nationally or in any section of the country, it may so inform the President. The President may appoint an Emergency Board to study the dispute and recommend settlement terms. Strikes or lockouts are banned for up to 30 days while the Emergency Board studies the dispute and for an additional 30 days following its report. If no settlement has occurred by then, the options available to the President are narrowed to requesting special legislation from Congress or letting a work stoppage occur.

The machinery of the act has failed time and time again, and the pace of the failures is accelerating. Only strong individually applied measures by the Chief Executive and Congress have averted major rail disruptions.

The Railway Labor Act has recently been buffeted by some of the most tumultuous labor disputes in its history. In 1967, the wage dispute between six shop craft unions and most of the major rail lines forced Congress to act no less than three times to avert a nationwide rail strike. The "firemen manning" dispute first came to Congress in 1963, at which time a joint resolution requiring arbitration of the dispute seemed to settle the matter. Since that time, however, the issue has been reopened in bargaining and has resulted in litigation; the basic dispute remains unsettled and is subject to strike action at any time.

Congress acted again to legislate a settlement, without strike, in the shop craft negotiations of 1970. Again in December of 1970 Con-

gress halted a nationwide strike involving three nonoperating unions and the United Transportation Union. In the signalmen's dispute in May of this year Congress was called upon to act to avert a nationwide strike, at least until October 1971.

The UTU dispute persists and brought selective strikes against a number of carriers—a tactic recently sanctioned with some limitations by the courts—and unilateral adoption of disputed work rules by the railroads. In any event, the record of the Railway Labor Act has been a sorry record overall and its record of recent years has been especially bad.

Over the history of this act 190 emergency boards were created to deal with transportation crises, an average of more than four per year.

The national trauma which accompanies each such crisis, even though a strike is averted, has caused disruption, bitterness, and public disenchantment with the act's collective bargaining system. We have seen this especially in the last 2 years when one threatened shutdown has followed another and the Government could respond only through last-minute efforts to stave off disaster.

Just why has this happened?

Changing attitudes among bargainers help to throw more and more disputes in Congress lap. In years gone by congressional action used to be widely feared. As one renowned bargainer once expressed it, "You simply never knew what terrible things Congress might do," and this is the way it once was. Thus for years apprehension over what unpredictable and horrifying things the Congress might do made the parties try harder to settle their disputes between themselves.

All this is changing. Congressional intervention has occurred. The results haven't been as upsetting as was feared. So now the possibility of congressional action in a dispute no longer strikes bargainers—at least some of them—as fearful. As a body of 535 work-burdened legislators, Congress can hardly be expected to familiarize itself fully with these complex disputes under the time constraints and in the crisis atmosphere that always attend their appearance on the congressional agenda. Yet that is what it is increasingly being called upon to do.

So the situation now, it seems to us, boils down to this. First, the public will no longer tolerate national emergencies caused by transportation labor disputes. Second, bargainers no longer fear congressional action as they once did, so more and more disputes will end up in the lap of Congress. Third, this leaves Congress with one of two choices: Either it must equip itself to get heavily into the labor dispute-settling business, or it must enact legislation to forestall assumption of this unwanted burden. Unfortunately, there is no other choice.

What kind of dispute-settling legislation should Congress entertain? The basic purpose of such legislation is simple—to assure that any action taken in connection with a labor dispute will not produce a national emergency. There are many ways to assure this, and each way has its advocates and its detractors. The question essentially resolves itself to this: In achieving our goal shall we try to save collective bargaining by strengthening it or should we try to come up with an alternative to it?

H.R. 3596, the administration's Emergency Public Interest Protection Act, opts squarely in favor of bargaining. I would be less than

candid with you, however, if I said our proposal allowed unfettered free collective bargaining. It does not, but it comes as close as prevention of national emergencies will allow.

In developing this proposal, there were essentially two routes open to us: First, a procedure aimed only at terminating emergency work stoppages once they have begun, or, second, the development of a proposal, the primary emphasis of which is to encourage settlement without such a stoppage but which also provides the means for terminating emergencies in the event that they do occur. We chose the latter approach. It seemed by far the sounder way to go. It embodied the two central objectives stressed by the President in submitting our proposal to the 91st Congress.

You will remember the first of these objectives is that the health and safety of the Nation must be protected against damaging widespread stoppages.

The second is that collective bargaining should be as free as possible from government interference, and that any legislation should serve to enhance, rather than reduce, the incentives to collective bargaining.

With these factors in mind, the emergency disputes provisions of the bill would build on the Taft-Hartley Act, supplying the President with three new options applicable to all transportation industries after exhaustion of the present Taft-Hartley procedures. The President could choose one option from the following:

(1) Extension of the cooling-off period;
(2) Partial operation of the troubled industry; or
(3) A procedure of final offer selection.

To create a new climate that will promote real and effective collective bargaining, H.R. 3596 would also substantially reform the procedures of the Railway Labor Act.

Under our proposal, the parties remain uncertain as to which option the President will choose. Their uncertainty is a force designed to influence them toward a bargained settlement. A second advantage of multiple options is that if no settlement is reached, the options allow the President to apply the most suitable response to the specific situation involved.

The first option authorizes the President to order an additional 30-day cooling-off period in which no strike or lockout would be permitted. This option might be used when the parties were close to an agreement but were reluctant to agree voluntarily to an extension of time. Also, when neither partial operation or final offer selection appears to be appropriate, the President might wish to delay a work stoppage while Congress considers the matter.

Second, the President could appoint a board to determine whether partial operation of the troubled industry is feasible. One possible mode of partial operation would be selective strikes, lockouts, or both. This would mean that some parts of the industry would be in full operation, and others closed down—and here is another important feature of the operation—at any time during the dispute. The board would determine by means of a hearing the scope and type of partial operation, to be in effect for a period of not more than 180 days. Its task would be to determine by means of a hearing whether, and under what conditions, partial operation would be consistent with the provision of services minimally necessary to the national health and safety.

Two conditions are imposed on partial operation. One is that the board must believe that the economic pressure resulting from the partial shutdown would be sufficient to encourage the parties to resolve the dispute. The other is that partial operation must not place a greater economic burden on any party than would a complete shutdown.

Before and during the period of partial operation, no change could be made in the terms and conditions of employment, except by agreement of the parties or action of the board. Where substantial bargaining is obviously necessary and traditional strike and lockout pressure would promote negotiations, such an option might well be selected if consistent with the national health and safety.

Third, the President could select a procedure which provides for the empaneling of a Final Offer Selection Board to determine by means of a hearing which final offer, submitted by a party to the dispute, would be installed as the collective bargaining agreement between the parties. As part of this process each party could be directed by the President to submit one or two final offers, as the parties wish, to the Secretary of Labor and to each other. Each final offer would have to be a complete labor contract, resolving all the issues in the dispute.

After the submission of offers, there would occur a mandatory, 5-day period of bargaining during which the Secretary of Labor could engage in mediation, encourage settlement through active mediation, and the parties could have a final go at resolving the dispute themselves. If the dispute remains unresolved at the end of this 5-day period, the Board would determine which final offer is the most reasonable. The decision would rest on the merits of the offers. The offer selected, without alteration, would comprise the collective bargaining agreement under which the parties would operate.

The final offer selection alternative is one of the most innovative concepts in the labor law field. It is the kind of concept needed to strengthen the effectiveness of collective bargaining. It would have the effect of forcing the positions of the parties closer together, since it requires selection, without modification, of the most reasonable offer of a party. The parties would be pushed toward the middle ground—the zone of disagreement would be narrowed—because the penalty imposed for maintaining an extreme position would be the likelihood of rejection by the panel.

The presence of this option will encourage collective bargaining in every stage of negotiation—early and late—thus providing greater possibility of a negotiated settlement. Few negotiators will want to take a chance on having the other side's contract imposed on their principals. Yet they will realize that the only sure way to avoid that result under final offer selection would be to make fair and reasonable offers themselves. Knowing they must ultimately make constructive offers, they are more likely not to harden bargaining positions in early stages.

Thus, in selecting the options to place at the President's disposal, it was our goal to develop a range of alternatives which would encourage settlement of the dispute by the parties themselves. The purpose of our new statutory structure is to limit Government intervention in free collective bargaining to an absolute minimum, consistent with the public interest. For this reason, we rejected some obvious options.

For instance, compulsory arbitration is not included among the

options because of the position distancing influence it exerts on the bargaining process. The general expectation is that the arbitrator tends to split the difference between the parties. With this in mind, the tendency is to hang on to extreme positions. As almost any bargainer knows, if compulsory arbitration is available there exists an often overwhelming temptation to build a case for one's own position rather than coming off that position in an endeavor to bargain out a settlement. Some observers have argued that if compulsory arbitration were mixed among other options, these effects would be somewhat diluted. However, the good effects of the final offer selection option on promoting real bargaining would also be diluted if compulsory arbitration were added to the option package.

Similarly, we decided against the inclusion of a so-called seizure provision. The weakening effect of seizure on the will to bargain is much the same as the effect of compulsory arbitration. Professor Blackman's 1967 study, "Presidential Seizure in Labor Disputes," showed that both labor and management often benefited economically from seizure, with the public footing the bill. That situation leaves little incentive to resolve hard issues.

As a companion to the emergency disputes provision of the bill, and equally important, is the reform we propose for the Railway Labor Act. The procedures of the Railway Labor Act which most obviously undermine, rather than strengthen, collective bargaining are the bargaining and emergency disputes provisions of the act.

The procedures of the Railway Labor Act which most obviously undermine, rather than strengthen, collective bargaining are the bargaining and emergency disputes provisions of the act. Under the procedures of the act, collective bargaining agreements are not required to have termination dates and are unchangeable by either side unless and until the procedures of the act are fulfilled; that is, formal notice, conferences, mediation, and finally, release by the National Mediation Board. Until the Board determines that a settlement cannot be reached through mediation, the parties are barred from resorting to strike or lockout. Often these procedures result in "negotiation" for months or years, thus unreasonably deferring employee wage and benefit increases and carrier operating changes. The result is hardening of positions, and inevitable delay, all with no discernible termination date to bargaining. The combination of these two factors makes effective bargaining increasingly difficult and helps explain the failure of the process and the ultimate reliance upon governmental action to resolve disputes.

What is needed are procedures that will serve to provide an incentive for real voluntary negotiation—and to assist the parties in resolving their disputes rather than serving as a steppingstone for further governmental intervention.

The administration's bill would make major changes in these procedures. Specific contract termination dates would be required. Parties desiring a change in the contract would be required to serve written notice thereof at least 60 days prior to the expiration date of the contract. After expiration of the contract, the parties would be free to resort to self-help, and if that action threatened national health and safety, the emergency provisions of Taft-Hartley, as amended by this bill, would be available.

In addition, and of particular importance in establishing an effective collective bargaining atmosphere, our proposal seeks to equalize the economic pressures of any strike, and thus to provide a meaningful incentive for both sides to agree in order to avoid a strike. The bill achieves this equalization by eliminating the provisions of the Railroad Unemployment Insurance Act which allow striking railroad employees to secure unemployment insurance benefits.

Thus, our proposal eliminates unreasonable delay and creates the salutory pressure of a meaningful deadline, all in furtherance of the collective bargaining process.

Presently grievances arising under the provisions of existing collective bargaining agreements are handled in the railroad industry by the National Railroad Adjustment Board, a Government-supported board. Our proposal would eliminate the board over a 2-year period and replace it with a private grievance and arbitration mechanism, not only to eliminate Government intervention, but also to reduce the strains on the bargaining relationships between labor and management occasioned by the board's case backlog, which is estimated to exceed 3,000 cases.

Now we come to an important but I think often overlooked feature of our bill.

If the provisions of this bill are to be effectively utilized and improved, it is important to understand why these labor crises affecting the national health and safety tend to be concentrated in certain industries. It is essential that we establish a better framework of information on this problem.

For this reason we have proposed in our bill that a Special Industries Commission be established to study and make recommendations to the President as to the best ways to remedy the weaknesses of collective bargaining in industries marked by critical labor relations problems.

Now, in response to the committee's request I would like to discuss four proposed solutions to the emergency dispute problem which your subcommittee is considering.

First, H.R. 3595 would amend the Railway Labor Act to authorize selective rail strikes involving no more than three carriers and 40 percent of the freight capacity in each of the three regions. The bill provides for partial operation of a struck carrier if the Secretary of Transportation, in consultation with the Secretaries of Defense and Labor, determines that certain goods must continue to flow for the Nation's health or safety. Furthermore, H.R. 3595 bans lockouts in response to selective strikes, and prohibits a carrier from instituting a new work rule unilaterally unless it can show that the rule was not initially proposed in response to or in anticipation of a proposal by the unions.

The contrast to the administration bill is significant. Our bill provides for "partial operation," which can include a selective strike, as one of a package of options for Presidential use where a national emergency exists in any of the transportation industries.

Indeed, even with respect to the procedure of partial operation of the philosophies of the two bills are different. The emphasis in the administration bill is on protecting the health and safety of the Nation. In our bill any proposed partial operation must be specifically and

carefully examined with this objective in mind before permitting it to take place. H.R. 3595, on the other hand, allows action first and provides for correction later. Under it, a selective strike may be initiated without any prior examination. After its initiation it would fall upon the Secretary of Transportation to limit it in the national interest.

Finally, H.R. 3595 would appear to create a disequilibrium on the side of the unions by restricting work rule changes and barring lockouts when a selective strike is called. One goal of the administration's bill is to create a balance of economic pressures which gives neither party an advantage.

I might add that since the introduction of this bill the Court of Appeals for the District of Columbia has ruled—and the Supreme Court has refused to review the rulings—that a union could not be enjoined from striking selected carriers to pressure all, with the goal of reaching a multiemployer settlement.

A bill of much broader scope is H.R. 2357. It would amend the Railway Labor Act providing the President with three options. Thirty days after an Emergency Board has submitted its report to the President, he may choose any combination of the following options: (1) providing a special board to impose a binding settlement for no longer than 2 years; (2) seizing the carrier and operating the system; or (3) proposing legislation to Congress to resolve the dispute.

It can be readily seen that the basic philosophy of this approach is almost directly contrary to the reasoning that I have expressed that has gone into development of the administration's bill.

A variation on this bill—that is, on H.R. 2357—is H.R. 5347. H.R. 5347 would also amend the Railway Labor Act, requiring the President, after the expiration of the 30-day no-strike, no-lockout period, to appoint a special board to assist the parties in resolving the dispute. The bill provides that the carriers must submit a final offer to the employees on which they vote by secret ballot. If they reject the offer, they must make a counteroffer to the carriers.

Where no settlement has occurred after the special board has reported, the President may direct any carrier to transport any goods, material, equipment, or personnel as he deems necessary to protect the health, welfare, safety, and public interest of the Nation. The President is empowered to set wages and working conditions consistent with the Board report of the parties' agreement.

This bill, too, with its emphasis on a presidentially sponsored settlement, is based on a different philosophical approach to emergency disputes than the administration bill.

Unlike the other bills I have discussed, H.R. 9088 adopts the same underlying approach as that of the administration's bill; that is, providing a package of presidential options intended to stimulate bargaining during the initial phases of the dispute and motivate the parties to make their own settlement.

Even though the two bills start from the same premise, there are some important differences. H.R. 9088 provides that the selective strike option must be used initially by the President unless national health or safety would be imperiled by doing so. In our bill partial operation is one option among equals. I fear that placing the "selective strike option" in a preferred position would, in effect, relegate the other options to a secondary position and detract from one of the

basic purposes of the options, which is to create uncertainty as to which type of Government intervention will occur.

Selective strikes are one form of economic pressure contemplated under the administration bill's partial operation option. However, our bill would allow selective strikes only after a determination by the Partial Operations Board that they would not injure the national health or safety. I believe it is our responsibility to be prudent in the first instance rather than to attempt a remedy after damaging actions have already taken place.

Perhaps the most significant mechanical differences between the bills is that the administration bill provides a single option procedure.

H.R. 9088 requires the President to use its various options until they produce a "final agreement." Under the administration bill if the original choice fails, Congress may take any further action it deems appropriate.

Now, let's examine this distinction. On initial reaction, the idea of "pyramiding" the options may seem reasonable, but upon closer examination I believe it raises difficult problems. Pyramiding draws out an already long procedure even more, heightening tension and greatly enlarging the risk of wildcatting or other action in violation of law. Pyramiding also may defer the imposition of options the parties find especially undesirable, such as the final offer settlement, and thus lessen the urgency with which they seek a bargained agreement. Pyramiding may, therefore, make it more difficult to promote settlement by the parties than would be the case with a single option approach.

Finally, an important distinction between all the bills discussed and the administration bill involves coverage. After examining this issue very carefully—and we did examine it very carefully—we decided to include all transportation industries, not only railroads and airlines.

There are essentially two reasons for this. An industrywide strike in a major transportation sector could, over a period of time, damage the very fabric of the national economy and severely cripple economic life. In our judgment such strikes—occurring in a single industry or even in several—cannot be ruled out. While industrywide strikes have largely occurred on the railroads to date, the increasing complexity of the economy and the trend toward national, rather than regional or individual bargaining, notably in the trucking and airline industries, make such emergency situations a distinct possibility in other transportation industries in the future. Moreover, the current situation in the maritime industry is especially troubling. Six times since 1947 strikes have outlived the Taft-Hartley cooling-off period, causing significant dislocation. We feel an obligation to look beyond the current rail crisis to the kinds of situations which are likely to arise in the near future. Taking this view, it is our judgment that protection should be provided in each of the national transportation industries.

So, to conclude my remarks—which have already run longer than I would have liked—I want to emphasize some very basic points. It seems to me an inescapable conclusion that Congress must either enact new labor legislation to deal with national transportation emergency disputes in the near future or get ready to go into the dispute-settling business on an increasing scale. If it chooses to act, it can either provide a substitute for collective bargaining or seek to strengthen bar-

gaining. Put another way, it can adopt a solution that includes something like compulsory arbitration or it can adopt a bill with the essential characteristics of our presidential option system, including final offer selection.

Of course, I hope that you will agree collective bargaining is worth saving and that H.R. 3596 can preserve it while protecting the national health and safety. But above all, I urge you to resist the temptation to believe compulsory arbitration and free collective bargaining can somehow lie down together like the lion and the lamb. At the core each is at war with the other. There must be a choice. Collective bargaining itself is on trial. Shall we judge it wanting and head down a new road? Or shall we try to preserve it by strengthening its long-recognized ability to balance contending forces in our economy?

This is the choice we face.

Thank you, Mr. Chairman.

Mr. JARMAN. We certainly appreciate your appearance here this morning to give this comprehensive statement on the important subject before us. For the record, would you identify your associates who are with you.

Secretary HODGSON. Thank you for giving me that opportunity.

At my left is Peter Nash, the current Solicitor of the Labor Department, our general counsel, so to speak, by another title. And to my right is Assistant Secretary W. J. Usery, Jr., who is in charge of our labor-management unit and is the chief mediator for the Department.

Mr. JARMAN. I think the Chair would have only one comment at this time on the statement and the subject before us. It seems to me that the final offer selection has great potential for good in the bargaining process in this amendment. It was stated yesterday in the hearing, or the contention was made, that actually the final offer selection does, in a sense, constitute compulsory arbitration.

Would you care to comment on that?

Secretary HODGSON. Yes, Mr. Chairman. It does constitute a form of compulsion. Anything that will preclude a national emergency, to give the President or the Congress the right to conclude a national emergency, constitutes compulsion and in that sense the observation may be accurate. In the sense that people who are not familiar with bargaining view the two and compare them, I would have to agree it does constitute compulsion.

The form of compulsion is the important thing. Compulsory arbitration is a form of compulsion which makes for advocacy and position-taking by the parties rather than bargaining. The tendency, as I indicated in my testimony, if a bargainer knows that compulsory arbitration is available at the end of the line, is for him to note that and decide, on the basis of noting that, what he should do while he bargains.

What does that mean to him while he bargains? It means that he should take a good solid distant position from where he wants to end up, because he knows that the arbitration process will not end up in exactly the position he is in. So it is necessary for him, he feels, to take a position that is less moderate than the one that he ultimately would be willing to accept. Exactly the opposite thing occurs in final offer selection. Moderation and attempt to appeal to reason to attract neutrals to his position and his position alone is his objective, and

that will move him toward the other fellow's position and move the other fellow toward his position.

In our judgment, during the course of the collective bargaining process this will bring them closer together, and in many cases without having to use the selection procedure itself. The mere operation of that possibility and having that possibility as an end product is the force compelling people to quit taking positions and to get with it and bargain.

Mr. JARMAN. Under the administration's bill each party would be limited to two final offers, as I understand it?

Secretary HODGSON. Yes.

Mr. JARMAN. It was suggested in the testimony yesterday that an approach might be made for each party to submit series of offers over a period of time, and not be in a position to retreat from an offer that had been made, but could move on to another offer on each side.

Would you comment on that?

Secretary HODGSON. We considered that. There were two reasons why we decided against it. It does have a kind of attractiveness theoretically, but it has two problems with it. One, when you get into disputes of this nature with the kind of time involved, we find every additional step requires additional time and the more steps you put in there, there is more time; and the more time, the more tension, and the more likely then it is for unfortunate illegal, self-help activities to occur.

So we want to make the time limits on this as reasonable as we can, consistent with the need for suitable deliberations, examination, and processing.

So any further steps that would add to the time must be viewed as a negative factor.

The second reason is that really at some point there always is a point in any bargaining situation where you have to make what is your best offer. We think after an 80-day cooling-off period, after an imposition of a presidential option, after a determination that the final offer selection will be used, and putting it to the parties right then gives them adequate chance to come up with their best offer. So that is really the reason that we came up with this idea of doing this early in the process and doing it at one time, and making it on what might be called a straight-out basis at that time.

Mr. JARMAN. Before going on to other questions, Mr. Secretary, let me ask as to this. Are you familiar with H.R. 9098, which I introduced by request last week and supported by others?

Secretary HODGSON. We are somewhat familiar. We have not examined it to the extent we did the others because it is too recent.

Mr. JARMAN. This bill was also introduced on the Senate side and would you have any comment to make on it on that approach?

Secretary HODGSON. I would like to ask Mr. Nash to comment on it.

Mr. NASH. There are a couple of major differences in that bill between that and what the Secretary directed his attention to this morning.

No. 1, there is no specific requirement of a showing of an emergency to invoke the emergency provisions of that bill, whereas under the administration's bill there is a requirement of a showing of a national emergency.

No. 2, that bill does include, I believe, compulsory arbitration in addition to the final offer selection procedure and I believe the Secretary has directed attention to it and why he thinks the two are inconsistent and why compulsory arbitration really dilutes the effectiveness of the final offer selection procedure.

Those, I think, are the major differences between that and the administration proposal.

Mr. JARMAN. Thank you very much.

Mr. Adams.

Mr. ADAMS. Thank you, Mr. Chairman. I know, Mr. Chairman, some of the questions I have will take longer than 5 minutes and I would like to request that perhaps I might take 5 minutes now and when everyone else has finished questioning then be allowed to ask the additional questions which I have of the Secretary.

Mr. JARMAN. Yes. I would say this off the record.

(Discussion off the record.)

Mr. ADAMS. Mr. Secretary, it is a pleasure to see you here today. My first question is: On your bill, what is the total time period you contemplate from the time of closure of contract until such time as the President actually puts into effect one of the options you have selected?

We have a chart here which provides, first, for the labor-management bargaining conference, then for the Federal Mediation Conciliation Service, which apparently you are going to use from the Taft-Hartley procedure, then for a Presidential board of inquiry, and then for an 80-day injunction. So, I am trying to get some idea of your total time period.

Secretary HODGSON. The number of days of bargaining before the anniversary or termination date of the contract will vary with industries and with arrangements that the bargainers come up with among themselves. Normally it is 30 to 60 days.

Mr. ADAMS. But you contemplate that bargaining will be prior to the contract expiration date?

Secretary HODGSON. Right.

Mr. ADAMS. Yes.

Secretary HODGSON. But then we have the contract expiration date and if at this point the feeling is that a national emergency exists, the President can follow the Taft-Hartley procedure and invoke the 80-day period.

Mr. ADAMS. Are you going to use the Federal Mediation Conciliation Service during the period of time prior to the expiration of the contract, or will it be an additional time after the contract termination date and before the 80-day injunction?

Secretary HODGSON. No, it will not be. There is no gap there during which Federal mediation will apply. Federal mediation has its opportunity at the present time to enter the bargaining during the time before the anniversary or expiration date of the contract and also during the 80-day cooling-off period.

Mr. ADAMS. There is no additional time provided?

Secretary HODGSON. No, there is no additional time provided there. At the end of the 80 days then, the President can at that time, or during the next 10 days in which he has what we call a decision period, make a decision on which procedure he wishes to employ. So you add 10 days there.

If he decides to employ the final offer selection procedure, there are 3 days to submit offers. Then after the submission of offers are 5 days for bargaining purposes and mediation by the Secretary of Labor. If that has not settled the matter, there are 2 days to select the final offer selection panel and then the final offer selection panel has 30 days to hold hearings and make a decision.

Mr. ADAMS. So you are talking approximately of 5 to 6 months from termination date.

Secretary HODGSON. 80 plus 50 days there.

Mr. ADAMS. I am trying to compare your partial operation system to the Staggers-Eckhardt bill, H.R. 3595. As I understand it, you create a board which determines the type of partial operation or selective strike. Is the board limited to a determination of partial operation on all lines or potential strikes on some lines with other lines being left completely free to operate?

Secretary HODGSON. It would leave it wholly open to the board to determine that.

Mr. ADAMS. So what the administration bill really would do is, have a board determine the type of strike that could be in operation?

Secretary HODGSON. And determine it in accordance with eliminating a national emergency, yes.

Mr. ADAMS. All right. In your opinion, and in the opinion of the other qualified gentlemen, if they want to answer this, is there sufficient competitive rail service in the United States that a selective strike can take place wholly on some lines and not on others and still avoid a national emergency?

Secretary HODGSON. I think that is speculative, but it would be implicit in our proposal that at least in some of these industries, including a possibility in the railroad industry, there are arrangements that could be made that would allow a selective strike and still preclude a national emergency.

The only concern is there be a prior careful examination of that to make sure that there be the end result, no national emergency.

Mr. ADAMS. The reason I asked that question is that a fundamental difference between H.R. 3595, which provides for selective strike, and the administration's proposal, which provides for partial operation or selective strike, is that the administration's proposal directly involves itself in the collective bargaining process by structuring or, in effect, compelling what will happen. Whereas under the selective system, collective bargaining is left to the parties in the first instance, the unions, to decide whether to strike and, in the second instance, the management, to decide what to do in terms of potential retaliation, with the Government limited to saying, "You have arrived at a point where there is a national emergency."

Now, why don't you think that the proposal of H.R. 3595, Staggers-Eckhardt, which would leave the matter in the hands of the parties, is better than, in effect, having a Government structure say how the parties will strike or counteract a strike?

Secretary HODGSON. Well, there are tradeoffs between the need to prevent a national emergency and the extent to which free collective bargaining can continue. In examining that tradeoff, we felt that what comes first is precluding of a national emergency and, second, insuring that collective bargaining be as free as possible, and we kept the priori-

ties in that direction, and that is the reason we proposed the procedure we did.

No. 1, we know if this board comes up with a proposal, there will not be a national emergency. But we have no way of assuring ourselves it will be the case if we allow the parties to decide that themselves.

Mr. ADAMS. Would H.R. 3595 be more palatable to you if it contained a provision that would allow action by the Federal Government when a national emergency occurred as a result of a selective strike by labor and a counteraction by management?

Secretary HODGSON. I think you should keep in mind that at the present time, as indicated by the courts, there is nothing to stop a selective strike from occurring and it is only when the President determines a national emergency exists that the option to selectively strike would be precluded, so I can't see how this situation arises.

Mr. ADAMS. My next question is: Before the provisions of your bill would come into effect, would there have to be a determination that a national emergency exists?

Secretary HODGSON. That is right. Say the La Salle Railroad, with 28 miles of track in Chicago, was struck. I guess it wouldn't cause a national emergency.

Mr. ADAMS. That is what I was getting to. Does your bill provide for a study to determine if there is a pattern of competitive rail service in the United States? This would give some guidelines to future presidential determinations of whether or not a national emergency would be created by a strike on X line or on Y line?

Secretary HODGSON. I would think without that, with our provision in existence as law, the Departments of the executive branch would want to, in advance, do considerable examination of that kind of thing so that if and when occasion ever arose for a board to have to make a determination in a relatively short time, the board which would be making such a determination would have some pretty good facts available to it.

We would see to it that would be the case.

Mr. ADAMS. We are concerned about the economic regulation of all the transportation industry. We want to determine if the industry is being properly economically regulated and if it still contains competitive lines. So we would be most interested in the results of your study in that field, because I intend to introduce today an economic regulation-type bill addressed to some of the economic problems of the area. So my question to you is: Is there competitive rail service throughout the United States or has it all gotten into a monopoly situation? I gather that you do not feel you can give more than a speculative answer.

Secretary HODGSON. That is right.

Mr. ADAMS. You indicated that one criticism of H.R. 3595, as opposed to the administration's bill, was that it might be overbalanced in favor of the union because of the retaliatory limitations placed on management. Do you agree that once a contract time period had run out, that management would have the right to put into effect certain work rules for their proposals?

At the present time I understand the contracts will be evergreen contracts, but you are contemplating specific contract termination dates, so under that period of time under your bill would it be con-

templated that both parties would be left free to place in effect their self-help?

Secretary HODGSON. They have available self-help to them until the point it creates a national emergency.

Mr. ADAMS. Now, I asked the following question yesterday morning: Do you believe that variable self-help is in effect only as to the lines that are struck or as to all of the lines whose contracts had terminated?

Secretary HODGSON. It wouldn't change the present circumstances regarding that.

Mr. ADAMS. Now, at the present time, contracts, as we all know, expire a whole series of differing dates and it is my understanding from Mr. Usery or one of the others, we are getting one contract termination date, so that if the contracts terminated at a particular time for that particular union and the union strikes line X, in your opinion could the other lines put in their proposal or managements on the other lines put in their work rule proposals?

Secretary HODGSON. Yes, as affecting that union.

Mr. ADAMS. What about the other unions?

Secretary HODGSON. Not unless they struck.

Mr. ADAMS. What if their contract had terminated?

Secretary HODGSON. They would have the same self-help available to them then.

Mr. ADAMS. Under your bill, if a union strikes just one line and it does not strike any of the others, are the nonstruck lines prohibited from locking out?

Secretary HODGSON. The lockout to be effected would be a kind of lockout that would produce a national emergency and then the national emergency provision of the bill would apply.

Mr. ADAMS. Suppose there was a selective management lockout?

Secretary HODGSON. It would be treated like a selective strike.

Mr. ADAMS. So you contemplate that the same provision would apply both ways, so that at the time of a national emergency, the Labor Department would take action under the provisions of the bill to prevent the emergency as the emergency spreads?

Secretary HODGSON. If and as.

Mr. ADAMS. If and as, correct, Now you indicate you want to also bring airlines, trucklines and maritime under the jurisdiction of this legislation. I probably have a philosophical agreement with you on part of this, but the reason the transportation industry is different is that the public and noninvolved parties suffer long prior to the parties that are directly involved in the dispute because they are dependent upon it. But I was wondering why you felt that this was necessarily true, for example, in the trucking industry, which is greatly fragmented, as opposed to the railroad industry, which is greatly compressed, with the airlines sitting between the two.

Secretary HODGSON. Yes. Well, simply the trucking industry was characterized for the first 30 or 40 years of collective bargaining in that industry by fragmented bargaining, but each successive bargaining has added to the national pattern of that bargaining and in the most recent two, and particularly in the most recent one, it was practically nationwide and if the strike had occurred, then we might have been faced with the same kind of thing, and I can't prejudge it. But we might have been faced with the same kind of thing we are faced with in the national railroad strike.

Mr. ADAMS. I understand that with regard to the trucking industry. However, with regard to the airline industry, this committee and your Department had to consider the case a few years ago of the shutdown of some airlines and not of others. Do you feel that the airline industry today is much more compressed than it was at that time?

Secretary HODGSON. It may. The reason that we are putting all major transportation systems in this bill is twofold: No. 1, an examination of past need, what it seems to us to be the place where the need existed for this kind of power and part of it to be placed in the President's hands; and, No. 2, knowing that there probably would be, if the development of our economy occurs, and technology increases, shifts in the relative importance of the various transportation industries.

You have to remember that the present Railway Act was passed in 1926, which is an awfully long time ago, and a lot of developments have occurred in transportation since that time. The airlines were not even in it then. Trucking was hardly in the status that it could even be called an industry at that time.

It may be that the bill that you gentlemen will be reviewing and passing out of this committee, and which the Congress will be enacting, will last just as long as the Railway Labor Act has lasted.

But today we should not just provide for laws covering the state of our technology and the nature of distributive elements of our economy just for today or just for the present, but for the technology of 3, 10 or maybe 20 years from today. Who knows what is going to happen to our air cargo?

I used to be in the aerospace industry and every 5 minutes we thought we were on the brink of a breakthrough in the air cargo industry and we thought that it would start to rival the trucking and railroad systems.

It is entirely possible that it will happen in the near future and it will not only have its present sizable proportion of people in comparison to other modes of transportation, but we will shortly have cargo transportation in significant measure, and, as we do, it will be an important thing to consider.

Mr. ADAMS. I have one final question. Does your bill contemplate, in your final-offer selection, varying contracts for the varying portions of a potential selective strike, or does it contemplate a nationally established labor-management system throughout all parts of the country?

I mentioned this because in the last three disputes we have been in, we have had considerable problems with variations, both in work rules and wage patterns in various areas; in other words, a wage pattern in certain portions of the country may seem adequate, but in other parts of the country seem inadequate, and this has produced severe problems. What does your bill contemplate with regard to that?

Do you leave it to the parties to finally create a package for the particular dispute or for the entire Nation, if it has been nationwide, or does your final-offer selection pattern pick and choose what is there?

Secretary HODGSON. The structure of the bargaining is left up to the parties. It deals merely with the effects of it. If the effects cause a national emergency, then the settlement is done on the basis of the effects that caused that national emergency.

Mr. ADAMS. Well, suppose that there has been a selective strike, which has grown to national proportions. For example, say that one-

half of the airlines have been struck, and you declare a national emergency and you implement the provisions of your bill. Now, when you apply your final-offer selection, do you apply it only to the one-half that was struck?

Secretary HODGSON. Only to the parties involved.

Mr. ADAMS. So that the other half of the people either would accept that as a pattern or they would proceed with their own bargaining or go into a strike?

Secretary HODGSON. That is a possibility, but, as you can see, this would be a pretty persuasive kind of pattern.

Mr. ADAMS. I can see that. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Secretary, I must say that it is incredible to me that with all of the advisers you have down in the Labor Department that you would come before this committee and urge us to amend the Taft-Hartley Act. If you truly mean what you say, then we might as well adjourn this hearing and go home because this committee has no jurisdiction over the Taft-Hartley Act whatsoever. It never has had in the 11 years I have been in Congress and I think if I stay in 100 years more, it still won't have, and you might better go over to the Education and Labor Committee and get those recommendations through.

Now, I say that because we are trying to help you here, believe it or not. This is why every bill but yours has changed the Railway Labor Act and not the Taft-Hartley Act. I have tried to express that to a few of your advisers down there and apparently it has not gotten through. But I mention it because it is an awfully important starting point wherever this committee begins in its deliberations, believe me.

Secretary HODGSON. Our bill amends the Railway Labor Act, as my testimony cites, and we don't determine which committee it goes to.

Mr. HARVEY. No, but I think you should have knowledge of the committee it goes through and certainly the people down there should have that knowledge and, as I understand the bill, it works from the Taft-Hartley Act. Maybe I read it wrong, but you use all of the techniques and all of the procedures of the Taft-Hartley Act right up until the President's final three options and 80-day injunction.

Secretary HODGSON. I am not arguing, but we amend the Railway Labor Act. We picked up the Taft-Hartley procedures and applied them to this act, but we did not determine the committee it should go to. We sent up the bill and Congress decided the committee it should go to.

Mr. HARVEY. Let me say this. There again, going back from memory, I can't remember a time when we ever had a Secretary of Labor come up in behalf of the trucklines urging any kind of ad hoc settlement. I can't remember the Secretary coming up in behalf of the maritime industry. It is always the railroads, and I don't recall one coming up—yes, one in behalf of the airlines, again under the Railway Labor Act. But it seems to me that these other industries are somehow making their settlements and getting along. It is in these two industries, particularly the railroads where we are having trouble. Wouldn't you agree there?

Secretary HODGSON. We have had some very significant trouble in the maritime and longshoremen's industries with strikes in those industries that have not been settled by the operation of the Taft-Hartley procedures which were invoked in recognition that a national emergency existed, and it was because of the demonstrated need in those particular industries. They also have a distributive effect the same way that the international transportation industries of the country have.

Mr. HARVEY. Have you ever had to come before Congress for a settlement in those strikes?

Secretary HODGSON. The strike that occurred after the imposition of Taft-Hartley in those respective industries have, I believe, in all instances been settled without congressional intervention, but they have occurred in defiance of a Presidential determination that a national emergency existed.

Mr. HARVEY. So what we are trying to do here is to work out a pattern of settlement which will get this away from Congress and away from the practice of coming before the Congress for these ad hoc settlements. I think your purpose is certainly the same as ours and it is basically the railroad industry that we are concerned with, wouldn't you agree there?

Secretary HODGSON. It is the one that has certainly occupied my time up here, but I would hope, as I said in answer to one of the recent questions, that this committee would not only concern itself with today, tomorrow, and the last 2 years, but take a look at the nature of the problem and the kind of industries that have and can produce national emergencies. We feel those are the transportation industries and those are the ones we have included here. It has been as simple as that.

Mr. HARVEY. Well, to go to another subject, I must say I find it incredible also that you say down on the bottom of page 18 here:

The most significant mechanical difference between the bills is that the administration bill provides a single option procedure.

I find it, frankly, incredible you would limit or restrict the President to a single option. Now he has, under your bill, just three options and one of those is a 30-day cooling-off period and another is partial operation. I try to look at this just as reasonably as I can, but I cannot conceive of a Secretary of Labor truly recommending to a President that he should take either one of those options.

Let me just point out the stories in the papers over the weekend. They were to the effect that the present rail strike appeared to be settled; that the parties were very, very close to settlement. Suppose that is the case and that it looks like that all it needs is a little more time. The Secretary of Labor then recommends that the President take the option of a 30-day additional cooling-off period. Then suppose what happens is exactly what has happened in the last few days. The parties really were not close to settling at all but all of the settlement talks dissolved and, instead, they are still far apart, then where are you?

Secretary HODGSON. Let us say we have this situation.

Mr. HARVEY. Well, let me tell first where you are. You are back where you started and you then, at the end of the 30 days, come to Congress and ask for an ad hoc settlement, isn't that right?

Secretary HODGSON. I was going to try to expound on the nature of the circumstances where I thought the 30-day proposal had merit. Now, let me say at the outset, Congressman, that there are a lot of hard choices to make in a situation like this.

You could have made the choice, and we considered it, whether these things could be used seriatim. But, as I said, to do that would draw out a lengthy procedure even longer and would not have the same force and effect on the parties to bargain out their solution themselves.

Mr. HARVEY. Let me interrupt you.

Secretary HODGSON. Just a second, if I may, because I want to go on and answer your question rather than argue.

Mr. HARVEY. I hope you can.

Secretary HODGSON. Yes; there are two kinds of situations where we will maybe want to use the first option. Back in late February, for instance, we had a circumstance where the Brotherhood of Railroad Clerks had reached an agreement or had tentatively reached an agreement and it was just a matter of finalizing the thing.

Well, before midnight we were, by the requirements of legislation passed by the Congress, to make a report of what kind of legislation we would produce for settling that dispute—at midnight we had to come up here with a proposal for legislation to settle it even though the thing was really settled. We knew it was settled. It was just a matter of working out the language and the details.

That is one kind of circumstance where selection of the first option would be helpful and that is one of the times we would use it.

Mr. HARVEY. No, no, no! Now, just a moment. You are using my time here.

Secretary HODGSON. Well, we would use this in that circumstance only when it was almost certain it would avert a dispute. The other time is when we needed to give Congress the time to consider action.

Mr. HARVEY. I am not quarreling with the alternative of the additional 30 days' period at all, because I think that is fine, but what I do quarrel with is the proposition that it should be the end result. As you say, if things don't work out in the 30 days, you come back to Congress. That is what we want to avoid.

Secretary HODGSON. I agree, and if there is any way I can work that out with any idea that you came up with, or any idea of the committee that would accomplish that purpose and yet accomplish the purposes our bill tries to achieve with its uncertainty feature, I would be for it.

Mr. HARVEY. What I had wanted to interrupt you for, when you said that the 30-day period just drew out the procedure that much longer, was to point out that the only alternative is to come back to Congress. When you make the 30-day cooling-off period the end result and a single option, what you are telling this committee is that if the President selects that 30 days as his only option, then the only other alternative if it does not work, is to come back to Congress. Isn't that right?

Secretary HODGSON. You are right. He made a choice and he would only make it in those circumstances which I have mentioned.

Mr. HARVEY. Well, he would be a fool to make it then. I cannot conceive of a Secretary of Labor in his right mind recommending to

the President that he place all of his chips on that one alternative, even when he is close to a settlement. For if settlement talks fall apart, he comes back to the Congress.

You know this is what we are trying to stop, not to continue it.

I would say the same thing about partial operation, Mr. Secretary. I can't conceive of a Secretary in his right mind recommending partial operation. That to me is no solution to the problem.

Now, you can go ahead and finish your conversation, if you want to.

Secretary HODGSON. No.

Mr. HARVEY. Now, I noted you included "selective strike" in the "partial operation." Is that a new construction of the act or did you intend that from the beginning?

Secretary HODGSON. No; "selective strike" is a term that is used more narrowly than "partial operation." Partial operation covers not only selective strikes, but the actual operation of certain kinds of or delivery of certain kinds of goods in addition to selective strikes, so partial operation is a general term and selective strike is a narrower term that is encompassed within "partial operation."

Mr. HARVEY. There is a difference pointed out by Mr. Adams in the one case that the union decides where the strike should be?

Secretary HODGSON. That is purely in the selective strike, in its narrowest context.

Mr. HARVEY. In a sense, it is selective in that they decide where to go on strike and they decide it?

Secretary HODGSON. Right.

Mr. HARVEY. As far as partial operation is concerned, your board would decide it, is that correct?

Secretary HODGSON. Exactly.

Mr. HARVEY. You stated on page 18 of your statement with regard to H.R. 9088, and I quote:

> I fear that placing the selective option in a preferred position would, in effect, relegate the other options to a secondary position.

Now my response to that statement is in light of the recent court decision, don't you believe that the selective strike option should be a preferred position? Isn't it a basic right?

Secretary HODGSON. The selective strike is available to the parties right now and it is only when it creates a national emergency, when the selective strike becomes of such magnitude of a national emergency, that our procedures would even apply.

Mr. HARVEY. Well, does your bill set up any criterion for selective strike?

Secretary HODGSON. Our bill sets up a board to determine what selective strike—or what partial operations, including selective strikes—should be permitted, and it sets up one criterion, which is that the effect of this should be no greater on the parties than a complete strike.

Mr. HARVEY. But you have no criterion with regard to, for example, the percentage of revenue-ton-miles in any particular region?

Secretary HODGSON. No; it is the fact as determined by the President, whether or not the national emergency exists, and then it has to go, as we indicated, through the traditional Taft-Hartley procedure.

Mr. HARVEY. Nor any criterion with regard to the number of carriers on strike?

Secretary HODGSON. That is right.

Mr. HARVEY. I have just one other question, Mr. Secretary. In H.R. 9088, which I introduced with some 54 other sponsors, there is a provision, and I refer to the provision in section 906(d), which would require that in any selective strike, any agreement of settlement must be offered to any of the other carriers.

You have no such provision I know of in the administration bill. Do you care to comment on that?

Secretary HODGSON. We would have to examine that further to see how that might apply to any and all situations. At the outset, we didn't want to prejudge that as being appropriate, but we will examine that.

Mr. HARVEY. Well, actually, the whipsawing tactics have been one of the greatest objections to the selective strike procedure, isn't that correct?

Secretary HODGSON. It has been one of the greatest objections to it, and I am sure it is one of the greatest objectives of it.

Mr. HARVEY. Very true and probably the airline industry is one of the best examples of it.

Secretary HODGSON. And the railroad industry as well.

Mr. HARVEY. All right, I have no further questions, Mr. Chairman.

Mr. JARMAN. Mr. Staggers, who is chairman of the full committee.

Mr. STAGGERS. Thank you, Mr. Chairman. I do not have any questions, but I would like to say to the Secretary and to the members of the committee that we have been asked for the past 3 years to pass some permanent legislation, and I think we are beginning to understand now, after 2 days, that it is going to be a bit difficult.

We hope to come to some solution, but there is just no down-to-earth solution that we can say is the answer.

I was interested in the last paragraph of your statement, which says:

> Of course, I hope that you will agree collective bargaining is worth saving and that H.R 3596 can preserve it while protecting the national health and safety. But above all, I urge you to resist the temptation to believe compulsory arbitration and free collective bargaining can somehow lie down together like the lion and the lamb.

Now, I thought that was a very impressive statement and one which I think exemplifies the truth. When you get compulsory arbitration, collective bargaining is going to go out the window, and that is all that there is to that.

Now, your concluding statement I also thought was good, and it reads:

> There must be a choice. Collective bargaining itself is on trial. Shall we judge it wanting and head down a new road? Or shall we try to preserve it by strengthening its long-recognized ability to balance contending forces in our economy? The choice is yours.

That is the choice of this subcommittee and I think it is very important in setting the direction this Nation takes in the future, not only in labor, but in many other forms of our society. I think it is going to be a tremendous decision that the subcommittee is going to have to come up with and I hope they have all of the wisdom in the world to come up with a good bill.

Thank you so much for coming up and I believe your statement was a good statement all the way through.

Secretary HODGSON. Thank you, Mr. Chairman.

I think you will notice, Mr. Chairman, in my oral testimony today I actually changed that very last statement, although you recited it properly from my written statement.

"The choice is yours." But I had changed it to: "This is the choice we face," because to the extent that we can be of help, we would like to work with you on developing this legislation, because it is a choice for the Nation, really.

Mr. STAGGERS. We appreciate that and also appreciate your help.

I was also glad to get your first statement about the current strike, because I think it is quite a change in affairs. I think it is wise and good that they have an opportunity really to work out their own affairs at the present time.

Thank you so much, you and your whole group, for your help.

Mr. JARMAN. Mr. Kuykendall.

Mr. KUYKENDALL. Mr. Secretary, the Chairman just mentioned the problems and they are going to be massive. but I think we will get out some legislation primarily because it is absolutely necessary.

Your background is in the law and labor relations and things like that.

Secretary HODGSON. Not the law, labor relations.

Mr. KUYKENDALL. Labor relations. Well, my background is as a professional salesman, so may I share with you for just a couple of moments a little selling advice.

You know somewhere in the Scriptures somebody told St. Paul, "Almost Thou persuadest me." Well, it can't be said this morning that you have persuaded anyone on this one issue.

I think if you had to pick out the foremost concern of this Congress, very closely behind the national interest would be that we are sick and tired of seeing all of you here handling labor disputes and we are not likely to pass a bill that is going to let you come back, even if you guess wrong on one of those choices that Mr. Harvey was talking about.

So this is about the only major difference between the administration bill and the Harvey bill, that is, this multiple choice. I beg of you, go back downtown, have a close look at how much interest you have in actually just the one choice, because you remember, and my friends from labor and friends from management certainly remember we had a case last year, Mr. Secretary, that had already been signed that we ended up with.

Everybody remembers that one, don't they?

Secretary HODGSON. Yes.

Mr. KUYKENDALL. And you certainly thought it was a sure thing and we ended up with it. So I don't think there is any such thing as a sure thing, and we don't want it back in our laps just because somebody guesses wrong. So I strongly advise you, have another look at that one.

Secretary HODGSON. You are a pretty good marketeer, Mr. Congressman.

Mr. KUYKENDALL. You already have it written down as I look at it.

Secretary HODGSON. We have had a number of those kinds of things. One other difference I would like to mention, and it is not just one choice or the other, an opportunity to use one after the other, but it is the insistence that it starts out with one kind of procedure rather than

letting the President decide on the basis of what is the most suitable for that particular dispute.

It insists a selective kind of procedure be used first, you see, so it is both things.

Mr. KUYKENDALL. Mr. Secretary, isn't the selective strike option an automatic natural option that they have now?

Secretary HODGSON. Yes.

Mr. KUYKENDALL. So the first option is more or less an acquiescence. isn't it really?

Secretary HODGSON. Well, you see, that is the point. At the present time they have a right to selectively strike and it is only when it reaches this stage that it becomes a national emergency, that we enter into this entire procedure.

Mr. KUYKENDALL. So that the first option you spoke of, the selective strike, which is what is going on right now in the Nation and that is mentioned in the Harvey and your bills, that is really in a way not an option at all, but it is acquiescence, isn't that true?

Secretary HODGSON. Yes, the Harvey bill says that it is the first one to be used.

Mr. KUYKENDALL. I think that is the first to be used because that is the first situation to exist.

Mr. HARVEY. If the gentleman will yield.

The selective strike I mentioned in the bill I introduced along with other sponsors is not the one going on right now. We have placed sharp limits on any selective strike. I would say to the gentleman, according to the information I put in the record yesterday, that if these strikes by UTU are carried out, they will have, at least in the Western region, almost three times the effect on load-carrying capacity as would be permitted in the legislation I introduced; in the Eastern region more than twice the effect on the load capacity of the railroad; and greater than our limits in the Southeastern district. They are not the same kind of selective strikes at all.

Mr. KUYKENDALL. Let's kind of lay the groundwork here in talking about the selective strike. All right, the right to strike, you have spoken out we all feel that it is within the national interest, it is a basic right. So backing into, drifting into, doing it intentionally, however it happens, the selective strike is something we watch up to a certain point.

That is the option, right? We just watch it up to a certain point and the point is "national emergency."

Now, there is no difference here, it seems to me, in what you said and what Mr. Harvey said in his bill except he drew a figure there as to when it becomes a national emergency. You have not, right?

Secretary HODGSON. Not only that. As I understand the other bill, it says that when the President then decides it is and he proposes an approach, he has to impose a selective strike first. He can't choose the final offer selection, he can't choose an additional waiting period.

I hope I understand that right.

Mr. KUYKENDALL. Let me say one thing, now, there is absolutely no guarantee that a selective strike won't get out of hand. I have yet to see any sort of a way to even determine the statistics that would keep it from getting out of hand. So I think the graduation of your selective strike into a national emergency strike would be something that is very, very difficult to determine.

I don't want the President guessing wrong on that either and vacating his right to use the great last chance of the final offer. We get back to the same thing. We hope that the selective strike ends up settling it, without becoming a national emergency.

Secretary HODGSON. Let me say, I am more attracted to the idea of giving the President some option at the end of the first two options than I am with the idea of starting as a first option a selective strike, no matter what.

Mr. HARVEY. Will you yield right there?

Mr. Secretary, you used the words "that the President would impose a selective strike" and I would correct you to say that under the language of the bill the President does not impose a selective strike, but he simply is required to approve a selective strike if he finds that it would not affect the national health and safety.

There is a real big difference there, because you start out with the basic right of the labor man to the selective strike.

Secretary HODGSON. That is one of the things that is confusing to me. If a selective strike exists and does not affect national health and safety, the procedure of the act does not start in the first place.

Mr. HARVEY. The President, though; would have to make that finding before any such strike could be carried out?

Secretary HODGSON. Well, the President does not have to make any finding if there is no national emergency. The subject does not come up and it is only when a national emergency comes up, then these procedures come up.

Mr. KUYKENDALL. I think we ought to work on semantics. We are considering no action at all as an action, we are considering no action at all as an option and you know a lot of times that is the best one. So don't you think that is what we have run into here? We consider that no action at all, which means you allow the selective strike within the national interest as an option.

You weren't calling it that.

Secretary HODGSON. Then you didn't have to provide for it initially as an initial procedure for the President to approve. It already exists.

Mr. KUYKENDALL. All right, if somebody wants to throw it in the bill to get it passed, let them. That is an easy price to pay and it is another point in salesmanship. Seriously, so I think we ended up talking about semantics all morning on this particular issue. Everybody agrees a selective strike is now legal?

Secretary HODGSON. Yes.

Mr. KUYKENDALL. Nobody has done anything to make it illegal within the point of the national interest, so all we are talking about here is when does the selective strike become something else?

Secretary HODGSON. And what do we do——

Mr. KUYKENDALL. Yes. Then what do we do?

Go ahead, Mr. Harvey.

Mr. HARVEY. I would say this: In the bill I introduced a selective strike is one of the options which follows the presidential emergency board. That presidential emergency board is created because there is a threat of a national emergency. So we have a 60-day period of delay and then one of the alternatives of the unions is a selective strike.

Now, it is that simple. You say the act would not come into play until a national emergency. I would say to you that the presidential

emergency board has been appointed demonstrates there is a national emergency and that is why it is appointed.

Mr. ADAMS. Will you yield?

I just wanted to ask, Mr. Harvey, does your bill contemplate that the no-strike, no-lockout provisions go into effect so that the selective strike, if it has been started, would be terminated when the emergency board is appointed?

Mr. HARVEY. I would say "yes."

Mr. ADAMS. So that at that point, regardless of what had happened beforehand, all would be stopped and then the procedures would start and a selective strike would then have to be authorized under the provision of your bill at a later time?

Mr. HARVEY. Yes.

Mr. ADAMS. Thank you.

Mr. KUYKENDALL. Mr. Secretary, let's get down to area of agreement. I think somebody from your office, hopefully you and Mr. Harvey ought to sit in his office and discuss this language, because I think all you are talking about is language. I just don't see that much difference in it.

Secretary HODGSON. I am puzzled by his reference to a Presidential Emergency Board. The Presidential Emergency Board, as contemplated under the Railway Labor Act, is done away with in our bill.

Once a national emergency exists as a result of a labor dispute, then the President invokes the Taft-Hartley procedures and at that point there is a board appointed that makes a report to the President. But that is after the national emergency exists. It would not exist, as I see it, if all that occurred was a selective strike before then that did not create a national emergency.

So what I am saying is this: That the whole procedure we are talking about does not take place unless and until an emergency is created through a selective or wider strike that has a national effect. After that procedure goes into effect, everybody goes back to work for 80 days during a cooling-off period. There is a final offer vote, and if the thing is not settled at that point, then the three options that exist in our bill go into effect.

My suggestion is at that point, as I understand the other bill, it is at that point the President has no choice on which of the three options to choose and automatically the selective strike procedure is used.

Do I have that right?

Mr. HARVEY. Mr. Secretary, if my friend from Tennessee will yield?

Mr. KUYKENDALL. Yes.

Mr. HARVEY. We are talking from obviously two different starting points, as I mentioned before. You are talking about the Taft-Hartley bill, which you used, beginning with the labor-management bargaining conference, Federal Mediation and Conciliation Service, and Presidential Board of Inquiry. And after that board makes its findings of facts and so forth and then you have 80 days, and then we go to the three alternatives.

And in the bill I introduced we are using the Railway Labor Act as a basis, and this is exactly what we started with.

Secretary HODGSON. Well, that clears it up for me.

Mr. HARVEY. Well, it should, because it is a totally different starting point.

Secretary HODGSON. Yes.

Mr. HARVEY. The national emergency already exists. That is the point.

Mr. KUYKENDALL. Let's get down to what has to be the final selling point, either you are going to rise or fall on one issue, which is the final offer selection. Either that will be bought and this whole idea will then be bought, or it will not be bought and the whole idea will fall on it.

We are not going to rise or fall on this argument, but the final selection. So let's talk about it.

Now, in answer to, I think it was the full committee chairman, or perhaps it was Mr. Jarman, the subcommittee chairman, that asked about compulsory arbitration. It would seem to me that we should have a definition of final offer selection and why it is not compulsory arbitration, even though it is a form of compulsion. That is, that the board under both your bill and the Harvey bill, the national board arbitrates in no way at all. It does not listen to either side's arguments after they get the final offer in, but it sits down and examines them. But there is no arbitration.

Secretary HODGSON. There are hearings to let the parties amplify.

Mr. KUYKENDALL. Yes, to amplify their positions.

Secretary HODGSON. Yes, and explain anything in it and anything that the board wants in the way of explanation.

Mr. KUYKENDALL. Yes, but it would be an explanation of their position and not a bargaining session.

Secretary HODGSON. That is right.

Mr. KUYKENDALL. There is no bargaining session and no arbitration.

Secretary HODGSON. Yes; the last bargaining occurs during the 37-day period after the parties submit the offer to the Secretary of Labor and to each other. There are 5 days, that is the period for bargaining, and if that does not settle it, the board takes over. However, the parties may reach agreement any time before the panel makes its selection.

Mr. KUYKENDALL. So the final solution covering the entire bargaining area, wherever it is, whether it is for just one carrier or nationally, will either be the work rules, the wages, the vacations, the fringe benefits of either one party or the other; is this correct?

Secretary HODGSON. Yes.

Mr. KUYKENDALL. Now, what we are saying here, and I am going to get on exactly the same subject with every witness from management and labor. I regret very much that management came out with a bill that approved compulsory arbitration, and I wish they had not, because I do not think either side really wants compulsory arbitration.

I know I do not and I do not consider the final offer as compulsory arbitration.

Now, don't we really get down, Mr. Secretary, to the fact that up to now we have had a system that you won't even get into the point of whether it was equally agreeable to both sides—it was not, but it was not equally feared by both sides either; so don't we really have to have a finality out there that is totally undesirable to both sides, equally so; isn't that really it?

Secretary HODGSON. I think the mere idea of finality on some basis other than that which you yourself have agreed to is offensive to both sides.

Mr. KUYKENDALL. So we are not going to make it attractive really, but make it offensive?

Secretary HODGSON. There is no way that you can jump between the horns of that dilemma completely; right.

Mr. KUYKENDALL. So the only way we can really encourage collective bargaining is to make arbitration undesirable for both parties?

Secretary HODGSON. That is one of the purposes of the bill.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Skubitz.

Mr. SKUBITZ. Thank you, Mr. Chairman.

Mr. Secretary, under the administration's proposal selective strikes are possible? This is correct, is it not?

Secretary HODGSON. Yes. In fact, as I pointed out, as long as the selective strikes exist which do not create a national emergency, they do not even come to the attention of this bill.

Mr. SKUBITZ. Is it possible to have a selective strike in only one region of the country that the board could hold does affect the national interest?

Secretary HODGSON. Well, the President, at the outset, would have to make that determination.

Mr. SKUBITZ. I understand; but it is possible so to hold?

Secretary HODGSON. Sure.

Mr. SKUBITZ. A selective strike in one section could be held to affect the national interest; be held to be a national emergency?

Secretary HODGSON. It would have to be of such magnitude that we could go, as we supposed, before a three-judge court and say, "We believe that it constitutes a national emergency for the following reasons," and then have it validated by the court.

Mr. SKUBITZ. With regards to "final offer." If I understand your testimony and the bill correctly, each party could submit a final offer and an alternative?

Secretary HODGSON. Well, they can, or they can submit one.

Mr. SKUBITZ. Or they can refuse to submit, and if they refuse, then the last offer they made would be used as their final proposal?

Secretary HODGSON. Yes.

Mr. SKUBITZ. Then there is an exchange of proposals and the Secretary gives labor's proposal to management and management's proposal would be given to labor. That is correct?

Secretary HODGSON. That is right.

Mr. SKUBITZ. Then the parties have 5 days to try to work out differences with the Secretary sitting in as a mediator, is that right?

Secretary HODGSON. Yes.

Mr. SKUBITZ. If there is no settlement in 5 days, then the parties select a three-man panel?

Secretary HODGSON. Yes.

Mr. SKUBITZ. The two parties then try to select this panel, and here is where the difficulty takes place, is that not right?

In short, are they going to get a panel favorable to labor or favorable to management? The background of every member that is recommended is carefully checked to try to see just how they might hold. If they cannot agree on such selection the President must select a panel, is this correct?

Secretary HODGSON. That is correct.

Mr. SKUBITZ. It just seems to me, Mr. Secretary that there is too much rigidity, not enough flexibility. I would like to have your views on this, since I am going to ask labor and management the same question. Shouldn't there be one additional step, that is, after labor and management consider each other's offers, they, in turn, could submit a final offer to the board and it could be this final offer that the panel would hold hearings on, and on which it would make its determination?

Secretary HODGSON. I think they really have already done that, because in our bill you go through the Taft-Hartley procedure and this requires this.

Mr. SKUBITZ. Let's forget Taft-Hartley for a moment and talk about whether or not this would be a good proposal.

Secretary HODGSON. I am, and the reason I have to talk about Taft-Hartley is that kind of thing has already occurred with the submission of a final proposal to the employees.

Mr. SKUBITZ. But, Mr. Secretary, what I am thinking of is an opportunity for both labor and management to look at each other's final proposal and then sit down at the conference table in a final try to iron out their differences. At that moment there may be some give and take.

Secretary HODGSON. Yes; there can be.

Mr. SKUBITZ. At that moment they might go into their own offices and write out an entirely new proposal which would be the final proposal.

Secretary HODGSON. They have 5 days of give and take to do it, everything they want with that thing to try to get an agreement.

Mr. SKUBITZ. I am suggesting an opportunity for each to say, "If you will give here a little and I will give here, we can reach an agreement."

Secretary HODGSON. Yes.

Mr. SKUBITZ. As it is, the only issue that could come before the panel will be the two final offers?

Secretary HODGSON. Unless you require them to submit the final offer at that point, they are not going to submit their best offer.

Mr. SKUBITZ. I am suggesting a new or revised final offer after they had a chance to look at each other's final offer.

Secretary HODGSON. How final is final?

Mr. SKUBITZ. I would make the bill final offer a semifinal, I guess.

Secretary HODGSON. I want them to submit their very best offer and then if that best offer provides a basis, or brings them close enough together so that in 5 days they can settle it, fine. But in the meanwhile they have committed themselves as to what they can do and they will never do all they can at that point unless they have to, as we say, "put up or shut up."

Mr. SKUBITZ. Mr. Secretary, let me tell you this. I am going to submit this same alternative proposal to both management and labor and if they both agree that it is a better solution, I am going to follow them, not you.

Secretary HODGSON. You are welcome to.

Mr. JARMAN. Let me ask for a comment on one part of the bill that I introduced last week and it is included in at least one other bill that has been introduced. In H.R. 9989 there are provisions that would make for full authority in the negotiators to settle the dispute. In section 102(a), in part the language is:

. . . all such representatives shall be vested with full authority to effect final settlement of disputes and all agreements entered into by such representatives shall be binding, whether or not ratified or approved prior to or subsequent to execution.

Now, regardless of what other provisions of the bill are finally voted out in the Congress, would you favor inclusion of language for a provision such as this?

Secretary HODGSON. I have not examined this subject in connection with a bill of this kind. I would say that my basic feeling is if the union itself gives its negotiators the right to make final and binding settlement, that is fine, well, and good. And I would encourage it.

But if the union itself does not want to do that, I question whether we ought to legislate it. That is just apart from this particular subject, which is a general point of view.

Mr. JARMAN. Of course, we have seen instances in major disputes where it looked like a decision and agreement had been made.

Secretary HODGSON. Well, I might want to reexamine it in connection with this kind of circumstance, because there is one thing that is very important to us, as you can see from both your bill and the testimony; that is, finally being able to solve these things once and for all. And that is an important feature.

Mr. JARMAN. Well, it occurs to me if we had such a provision in the law, that the effect of it might very well obviate putting into force the other alternatives that would follow down the road.

Secretary HODGSON. I understand, yes, and I will examine it.

Mr. JARMAN. Any additional questions?

Mr. HARVEY. No questions, Mr. Chairman.

Mr. KUYKENDALL. I have no questions.

Mr. JARMAN. Mr. Secretary, we very much appreciate your being with us today and adding to the record on this important subject, and the subcommittee now stands adjourned.

(Whereupon, at 11:55 a.m. the subcommittee adjourned, to reconvene at 10 a.m., Thursday, July 29, 1971.)

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

THURSDAY, JULY 29, 1971

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. John D. Dingell presiding (Hon. John Jarman, chairman).

Mr. DINGELL. The subcommittee will come to order.

This is a continuation of the hearings of the Subcommittee on Transportation and Aeronautics to scrutinize legislation and the factual situation attendant upon transportation labor disputes now going on in the Nation.

Our first witness this morning is the Honorable John J. Rhodes, of Arizona.

Welcome, Mr. Rhodes. Please proceed as you see fit, sir.

STATEMENT OF HON. JOHN J. RHODES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. RHODES. Mr. Chairman, it is an honor to come before this committee today to comment on the current legislative proposals for settling emergency labor disputes.

In reviewing this general area we must remember that one of the major problems we face as a nation is the dangerous, and continuing spread of inflation. In seeking a solution to this problem we must study the causes.

One factor whose significance has increased considerably is the inflationary wage settlement in industries vital to the functioning of the economy. These settlements, especially when they bear no real relationship to increases in labor productivity, ultimately have the effect of driving up the costs of products for the consumer, thus further reducing the purchasing power of the dollar.

However, when strikes and labor walkouts in key industries precede these inflationary wage settlements their full impact upon the economy is most keenly felt. Thirty-one major work stoppages took place during 1970. I should note that the Bureau of Labor statistics of the U.S. Department of Labor defines as major a stoppage involving 10,000 or more workers. The five largest of these stoppages resulted in a loss of more than a million man-days each. Strike idleness rose to 0.34 of estimated working time in 1970, up from 0.24 in 1969 and 0.02 in 1968.

But the worst may be yet to come. Nearly 5 million additional workers either are now or soon will be involved in contract negotiations with some of the Nation's largest industries. Union leaders are giving notice that labor's demands on employers will continue to escalate. These leaders are already out beating the public relations' drums in an effort to win public support for their position, arguing that the wage increases won in the last round of contract talks have been entirely eaten away by inflation.

I realize that five of the proposals before you cover disputes in the railroad and airline industries only, and the other extends coverage to all transportation industries. None of these proposals go beyond the area of transportation.

To be sure, few work stoppages would affect the entire American economy as immediately and massively as a railroad strike. But the effects of long strikes or strike-induced inflationary wage settlements in any number of basic industries can—and have been—nearly as severe in the long run, if less visible and dramatic. In looking into the causes of our economic ills, the time has come to think seriously about whether we can afford either serious strikes in industries essential to our economic system and on the kinds of settlements to wage disputes produced by our current manner of handling such problems.

First of all, I think we must begin to reconsider carefully the very concept of the strike and the lockout as a legitimate economic weapon under contemporary conditions. A strike is actually nothing more than a declaration of economic warfare by workers against a particular industry. It occurs as a result of judgments made by both labor and management that each possesses the economic power to force its will on the other. Both realize that sooner or later bargaining will be resumed, and a settlement reached; each seeks however, the most favorable conditions for the resumption of negotiations and the most favorable possible settlement. Now from the perspective of the objective merits of a particular labor dispute, there was always an irrational element to the use of strikes as a means of settling labor disputes. The position of both labor and management is tarnished by self-interest, and neither is really in a position to determine in a just manner appropriate terms of settlement. There was a time when such considerations did not seem so important. When the strike gained prominence as an economic weapon in the 19th century industrywide bargaining was unknown, and the effects of individual labor crisis limited. Obviously these conditions no longer obtain, and the question is whether we can any longer afford the high social costs of strikes and work stoppages in industries which operate on a national basis.

Second, we need to examine carefully the effectiveness of our present machinery for dealing with lengthy work stoppages in basic industries. Specifically, of course, I have in mind both the Taft-Hartley Act, and the Railway Labor Act.

It seems apparent that new legislation is needed to deal with threatened work stoppages in critical industries. I believe that these critical industries extend beyond the field of transportation. And, therefore, while I appreciate and share your interest in some of the proposals before this committee, I feel that a broader response to this national crisis will be necessary in the long run.

It is for this reason that I introduced H.R. 2373, a bill that I believe contains the best solution to this far-reaching problem. This bill proposes to establish a U.S. Court of Labor-Management Relations.

On matters referred to it, this five-member court would have authority to determine if the particular labor-management dispute is one adversely affecting or threatening to adversely affect the public interest of the Nation to a substantial degree. If it determines that it is such a dispute, the court would have exclusive jurisdiction over it.

This would be a judicial body applying precedents as well as statutory law to determine the disputes which constitute national emergency disputes.

The jurisdiction of the court may be invoked by either of the parties to the dispute, or by the Attorney General. Thus, the President, through his Attorney General, may go to court, either to halt a work stoppage, or to set aside or modify a proposed settlement which he believes to be inimical to the public's interest, either because it is inflationary, or for other sufficient reasons.

In any event, the jurisdiction of the court could be invoked only after existing procedures for collective bargaining and mediation have been exhausted. This provision is included not because the present procedures have been a notable success, but because it may be expected that the parties will more fully utilize present procedures, in good faith, to reach agreement, if a form of compulsory arbitration is inevitably the result of the exhaustion of present procedures without the reaching of agreement.

The parties to the dispute are permitted to petition for relief from the court prior to exhaustion of present procedures for bargaining and mediation. This is provided so that if one of the parties is pessimistic about reaching agreement he may take a short cut, thereby avoiding the wasteful charade of going through the motions of complying with present procedures. It is expected, however, that the court would refuse jurisdiction unless it is satisfied that further pursuit of traditional methods would be fruitless.

If the court finds that the result of a labor dispute could have a substantially adverse effect on the national interest, it has the power to enjoin the strike, lockout or other stoppage. The status quo will be maintained. For 80 days, the court is empowered to act as a mediation agency, getting the parties together, holding hearings, and generally seeking voluntary agreement. If at the end of the 80-day period, the parties are still in disagreement, the court will hold hearings. After hearing all parties and their evidence, the court "shall make a final determination of all issues in the case and shall enter a final judgment which will settle all such issues." Its judgment may be set aside if they are arbitrary or capricious, or are violative of a right conferred by the Constitution of the United States.

H.R. 2373 would neither destroy the body of precedent built up under existing legislation, nor the principle of collective bargaining itself. Indeed, my proposal leaves all present structures and institutions intact. It is designed merely to provide a sensible alternative to a disastrous work stoppage occurring as a result of a wage dispute if the current machinery fails.

Such legislation as I have suggested would serve a number of purposes simultaneously. It would, as I have indicated, guarantee that

the Nation as a whole will be spared the economic consequences of crippling strikes and work stoppages, as well as inflationary wage settlements. It would, by creating the possibility of a final, impartial judgment about the merits of labor and management positions in a particular controversy, encourage realistic bargaining based on facts about productivity increases and industry profits rather than irresponsible and self-serving demagoguery. It would provide a protection for the consumer, who is the unrepresented party at all bargaining sessions under existing conditions—despite the fact that he is the one who ultimately pays for strike losses, or for any excessive settlements reached.

Of course, I realize that H.R. 2373 is not before this committee since it was referred to the Committee on the Judiciary. I acknowledge the strong merits of some of the proposals before this committee. Nevertheless, I felt that knowledge of the existence of my proposal would be beneficial to you as you consider this general field. I firmly believe that H.R. 2373 actually contains the necessary and complete response to the needs of responsible reform in the overall field of national labor-management relations.

Mr. DINGELL. Thank you, Mr. Rhodes, for sharing your views with us this morning.

Mr. RHODES. Thank you, Mr. Chairman; it has been my pleasure.

Mr. DINGELL. Our colleague from the State of Michigan, the Honorable Jack H. McDonald, has a statement he would like to present to the committee this morning.

Welcome, Mr. McDonald. Please have a chair, sir, and proceed when you are ready.

STATEMENT OF HON. JACK H. McDONALD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. MCDONALD. Mr. Chairman, I appreciate this opportunity to testify on H.R. 9088, to amend the Railway Labor Act, and on the subject generally of needed revisions of that act.

Since last December there have been three major railroad strikes. The first two, on December 10, 1970, and May 17–18, 1971, were resolved by act of Congress. Now we face a spreading selective strike that started on July 16, 1971. Already closed down are Southern Railway, Union Pacific, Southern Pacific, and Norfolk & Western. These railroads among them handle about 45 percent of all cars moving on U.S. railroads. Next Friday, July 30, six more roads will be struck, and five more the following week.

I do not here pass on the issues contested in the current strike or those of the past few months. But I do say that these strikes indicate an enormous need for change in the Railway Labor Act. Judged by results, the act is a failure at its avowed aim of preserving labor peace on the Nation's railroads. The act must be amended, substantially. Disruption of rail service, even on a single major railroad, can have dire effects on the national interest—health, defense, and the economy—and can no more be tolerated than can disruption of the postal or other vital public services.

In my opinion, the major problem with the present Railway Labor Act is the lack of compulsion upon the parties to come to a reasonable

settlement in accord with the public interest, without disruption of service to the public. In other words, the Railway Labor Act needs provision for final resolution of these issues between labor and carrier management in a civilized manner, rather than by trial by combat as is the current custom.

I am one of the named sponsors of H.R. 9088. I believe this bill, with amendments such as those I describe below, can serve as the vehicle for badly needed reform of the obsolete structure of the Railway Labor Act.

1. The standard to be added to section 10 of the Railway Labor Act for what is required to trigger the powers of the President to invoke the new procedures for dealing with a dispute between a carrier and its employees is too rigorous. The bill gives the standard as "threaten susbtantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." Bargaining disputes between one carrier and one union can have national ramifications, local settlements can set national patterns. It would be better to eliminate the standard, so that the matter will be left entirely to the discretion of the President, who would be in position to exercise informed judgment as to whether the new procedures should be invoked.

The same is true of the similar standard in proposed section 303, on page 4 of the bill. That should be omitted, and the President left to use his discretion in the public interest.

2. Proposed section 306 to be added to the Railway Labor Act, pages 5–8 of the bill, should be stricken. It allows the employees to use what has proved to be their most effective economic weapon, the selective strike, while it forbids the carriers the use of one of their most important tools, the lockout. At the same time, the President would be empowered to require partial operation of the struck carriers. Partial operation, I am told, would usually be impractical, except at enormous expense to the carrier. The net effect of section 303 as now written would be greatly to increase the pressure on carriers to settle individually with the unions for whatever terms they could get. It would destroy industrywide bargaining. Considering the disproportion in bargaining strength between strong national unions and relatively weak individual carriers, the result could be economic disaster for rail and air carriers. Nationalization would be brought several steps closer.

3. I support the "final offer" procedure in proposed section 307, pages 8–11 of the bill. It provides for finality, and would make the parties to a dispute try to avoid extreme positions in their bargaining offers. I would suggest, however, that section 307 be amended to call for a continued exchange of "final offers," say, once every 48 hours, for as long as the parties continue to narrow their differences. When the differences are no longer narrowed, the final-offer panel would proceed to select one final offer, pursuant to proposed section 307(e)–(g).

Should the President invoke this option, the pressures on the parties would be toward reasonableness. All too often, under present bargaining procedures, intransigence is rewarded handsomely, with the most intransigent party the most handsomely rewarded.

4. One of the options open to the President should be to select submission of the issues to arbitration. I understand that there is an

excellent arbitration provision in S. 2060. After all, the public is as concerned as the parties with the final terms between carrier management and labor, and arbitration in many cases would be a more appropriate measure than "final offer" selection. Another option that clearly should be open to the President is to do nothing. It should also be provided that the President during a dispute may try one option, for example, to do nothing, and then another, for example, "final offer," if earlier choices of action have not worked.

When considering revision of the Railway Labor Act, I suggest that this committee bear in mind the example of the recently enacted Postal Reorganization Act, Public Law 91–375. In that act, the postal employees were given the right freely to select their own collective-bargaining representatives, and a voice in determining their conditions of employment. But they were not given the right to strike, because "the Postal Service is too important to the people and the economy of this Nation to tolerate postal strikes."

Reading further:

> Collective bargaining in public employment involves factors that differ importantly from those traditionally found in the private sector. In the private sector, a strike involves an economic contest pitting the stockholders' capacity to forego profits against labors' capacity to forego wages. A strike may impair the ability of the enterprise to compete successfully in the market. In the public sector, the stakes are quite different: *A strike would not merely threaten the income of a public enterprise and cause loss of wages to workers, it would also directly imperil the public welfare.* The extent to which the public welfare might be so imperiled has been vividly brought home to all by the events of last March.—
>
> Since it will continue to be unlawful for postal employees to strike, H.R. 17070 provides for binding arbitration in the event of unresolved collective bargaining impasses so as to assure parity of bargaining power between labor and management." [Emphasis added.] House Report (Post Office and Civil Service Committees) No. 91–1104, May 19, 1970 [To accompany H.R. 17070].

I submit that the same considerations apply so that strikes should not be allowed against the railroads, the movers of over 41 percent of the Nation's freight, including most food, coal, and basic industrial materials, or against the airlines, principal commercial movers of passengers.

Thank you for hearing me. I hope that we in Congress can quickly arrive at a fair procedure for solving the urgent labor problems in the rail and air carrier industries as exemplified in the costly railroad strike now going on. Such a solution is long overdue. Congress must get out of the position of ad hoc arbitrator of labor disputes, or it will find itself able to do little else.

Mr. DINGELL. Thank you, Mr. McDonald, for your thoughtful statement. The committee appreciates your views on this important legislation.

Mr. MCDONALD. Thank you, Mr. Chairman, for affording me the opportunity to present my views this morning.

Mr. DINGELL. Thank you again, Mr. McDonald.

The committee is honored to have a distinguished American and very fine public servant, the Honorable John A. Volpe, Secretary of Transportation, to testify this morning.

Mr. Secretary, as your friend and admirer, it is a privilege for me to welcome you to this committee.

STATEMENT OF HON. JOHN A. VOLPE, SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY CARL V. LYON, ACTING ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; JOHN BARNUM, GENERAL COUNSEL; AND THOMAS TRIMARCO, ASSISTANT GENERAL COUNSEL

Secretary VOLPE. Thank you very much, Mr. Chairman.

Mr. DINGELL. I note you have with you associates and members of your staff. If you will identify yourself fully for the record and those present at the committee table with you, the committee will be most pleased to recognize you for any statement you wish to give.

Secretary VOLPE. Thank you very much, Mr. Chairman, members of the committee.

I have with me this morning on my right, the Federal Railroad Administrator, acting capacity, Carl Lyon. To my left, our General Counsel, John Barnum; and to his left, the Assistant General Counsel for the Department, Tom Trimarco.

Mr. DINGELL. Gentlemen, we are happy to recognize you and welcome you also.

Mr. BARNUM. Thank you, Mr. Chairman.

Secretary VOLPE. I deeply appreciate this opportunity to be here today to testify on H.R. 3596, the Emergency Public Interest Protection Act of 1971.

Secretary Hodgson has already testified in depth on how this legislation will provide a viable mechanism to deal with strikes and lockouts in the transportation industry. It is not necessary for me to repeat his thorough analysis. What I will do, therefore, is review with the committee my experience as Secretary of Transportation, which has convinced me of the critical need for this legislation.

The President, in recommending the enactment of this measure, said on February 3 of this year:

> The urgency of this matter should require no new emphasis by anyone; the critical nature of it should be clear to all.
>
> * * * * * * *
>
> I believe we must face up to this problem, and face up to it now, before events overtake us, and while reasoned consideration is still possible.
>
> * * * * * * *
>
> The legislation I propose today would establish a framework for settling emergency transportation disputes in a reasonable and orderly fashion, fair to the parties and without the shattering impact on the public of a transportation shutdown.

I have, Mr. Chairman and members of the committee, been Secretary of Transportation now for 2½ years. I have seen the shattering impact on the public that the President spoke of, and I have experienced the frenzied activity needed to resolve transportation strikes, even on a temporary basis. During just the last 18 months this Nation has been faced with the dilemma of a nationwide railroad strike on two separate occasions, and on yet a third occasion a nationwide strike was barely averted. We are currently experiencing a rash of selective strikes whose seriousness must not be underrated. In the spring of 1970, Congress averted a strike by legislative action, first by postponing the strike for 37 days and then by enacting legislation that imposed a settlement. We were less fortunate the other two times. In December of 1970 and this

past May, the country experienced two short-lived strikes which, but for the speedy action of the administration and the Congress, would have crippled the Nation. As I informed the committee in my most recent appearance before you in May, effects of the shutdown were staggering.

Nearly 350,000 commuters in our major cities were forced to find other ways of getting to work.

Amtrak service of 185 daily passenger trains was halted.

The 41 percent of all intercity freight movement carried by rail was stopped.

Major industries, such as steel, automobiles, and food processing, began to feel the effect within 24 hours, and forecast that major or total shutdowns after one week would follow.

In overall terms, we projected that at the end of a 2-week national rail strike, the gross national product for that period would be reduced by over $1 billion. As you know Senate Joint Resolution 100, which temporarily resolved that strike, required the Secretary of Transportation and the Secretary of Labor to report to the Congress as to the impact of the work stoppage. That report, which we will be submitting at the beginning of next week, will outline in detail the full effect of the strike.

To end that strike, Mr. Chairman, the administration proposed and the Congress enacted emergency legislation. But both the Congress and the administration recognized that permanent legislation was necessary to prevent the continual recurrence of such stopgap legislative efforts. Our proposal is meant to do just that. We cannot continue to ask the Congress to decide these issues on an ad hoc basis. That is why we are proposing a mechanism for resolving disputes—one which allows labor and management to bargain out their differences without economically crippling the Nation. This legislation is meant to tell labor and management that they can have flexibility in their bargaining, but at the end there must be a final settlement. We are not telling them what the terms must be—we are merely saying that they must reach an agreement.

I should like to make one thing clear. This is not a promanagement bill, nor is this a prolabor bill. It is a bill, as its title states, in the public interest. It is a bill which is meant only to protect the people of this Nation from becoming the innocent victims of a labor-management dispute within a single industry.

I have been on both sides of the labor/management fence. As an owner of my construction business, I was management. I was privileged to serve for 2 years as chairman of the Labor-Management Relations Committee of the Associated General Contractors of Massachusetts and for 7 years as a member of the Associated General Contractors of America's National Labor-Management Relations Committee. As the committee knows, I am proud to admit that I started as plasterer's apprentice and, in fact, I still hold an honorary lifetime membership in the International Plasterers Union. As a result, I feel that I understand many of the problems of labor/management negotiations, and I am confident that this bill enhances the incentives for negotiations and the prospects for voluntary settlement.

The question has been raised as to why we have singled out the transportation industry for special legislation. There is no other

industry where the effects of work stoppages have such a devastating effect on our national welfare. Simply stated, the transportation industry is the lifeline of our Nation's economy. Each mode plays its part—be it trucking, airlines, railroads, or maritime—each catering to the kind of business it can most efficiently and effectively serve. The other side of the coin, however, is that if one mode is shut down, the other modes cannot easily take up the slack. For example, the transportation of steel or automobiles cannot readily be shifted to other modes on short notice if the railroads go on strike. Likewise, there is no modal substitute for rapid coast-to-coast passenger transport by airplane. It appears that one of the prices we pay for the specialization in our transportation industry is that we are dependent upon it. The shutdown of one of our transportation modes, or a substantial portion of any mode, unbalances the entire system, and has an impact upon the national health or safety. The severity of this situation calls for special remedy.

This, then, is the problem. We are faced with an industry which does not manufacture a product, but makes possible the manufacturing of almost all products. Transportation is the link which binds our many material sources to our industries; it is the link which binds our industry to the consumer. In short, it makes possible the free flow of goods and services which is the keystone of our economic system.

The public interest precludes our allowing that process to flounder, yet our commitment to the essential fairness of the collective-bargaining system precludes our altering it any more than is absolutely necessary. What the administration proposes, therefore, merely enlarges the options open to the President to facilitate and encourage fruitful collective bargaining.

As I said, this legislation proposes a mechanism for resolving disputes. The bill would accomplish this in two ways. First, it would make emergency procedures consistent throughout the transportation industry and would adopt certain bargaining practices successfully used in other industries, such as contract termination dates. Second, the bill would give the President three new options if a dispute is not settled within the framework of the normal collective-bargaining process and the 80-day Taft-Hartley cooling-off period. He could extend the cooling-off period for up to an additional 30 days; he could set up a special board to determine if partial operation of the mode were possible, thus allowing a partial strike or lockout; or he could appoint a disinterested panel to choose the most reasonable of the final offers made by management and labor. All three options are meant, as I said, to make the situation more conducive to a negotiated settlement between the parties.

Mr. Chairman, the President has reiterated his recommendation that the Emergency Public Interest Protection Act, H.R. 3596, be enacted. The administration recognizes the need for this legislation. We cannot continue to live from crisis to crisis. We all know that hindsight is better than foresight, and we must take advantage of our hindsight to plan for the future. This is what we as a Government owe to the people. We strongly urge its enactment.

Mr. Chairman, that concludes my prepared statement. I shall certainly be happy to answer any questions the committee may have.

Mr. DINGELL. Thank you very much, Mr. Secretary.

Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Volpe, when Secretary Hodgson was here yesterday, he testified that the administration included in its legislation the option of partial operation. You also mentioned that this morning. The Secretary of Labor also stated that included in that partial operation was the selective strike. One of the things this committee is going to have to determine in its wisdom is when a selective strike will be tolerated by the Nation and by the public and when that selective strike so imperils the national health and safety that it cannot be any longer tolerated. I wonder if you would like to enlighten the committee as to your thinking in this matter?

Secretary VOLPE. Congressman Harvey, there is, of course, a difference between partial operation and a selective strike. Partial operations might require in some cases that the railroads, expend almost as much effort as they would if they were in full operation, and yet only be carrying perhaps a small percentage of the tons of freight or passengers that they normally would carry. In a selective strike, of course, the situation is different in that it affects only certain carriers and shuts them down almost 100 percent, or in some cases, 100 percent.

So, as you have well said, the critical question is at what point does a selective strike or strikes endanger the health, safety, defense, and welfare of the Nation, and what action should be taken if they do? That is a matter of judgment, and I do not think anyone could say that at 33.2 percent, or some other percent, action should be taken.

I think it depends on which regions of the country are shut down and whether or not there are competitive modes of transportation or whether there is a competitive rail system.

So I would say it is not anything that we can have a formula for. I think it actually has to be on the basis of a day-to-day assessment of the impact on various parts of the country, whether it be partial operation or selective strikes.

Mr. HARVEY. Well, let me just say this. Organized labor has expressed their view quite clearly. They feel entitled to the basic right to strike so long as their strike does not imperil the national health and safety and affect the Nation as a whole. The Supreme Court of the United States has just recently, by refusing to review the circuit court of appeals decision, affirmed that thinking. So that selective strikes are with us at the present time.

Now, I think that organized labor feels very strongly that they would like to know within the definition of what limits they can operate. They want to be certain of what is a selective strike and what is not a selective strike. The bill that organized labor has approved is before this committee and has been introduced by the chairman of the full committee, Mr. Staggers and Mr. Eckhardt. They define in that bill what is permissible in a selective strike as being within 40 percent of the revenue-ton-miles carried in any particular one of the three regions of the country.

Now, in the bill that I have introduced along with 55 other sponsors, we have defined those limits as within 20 percent of the revenue-ton-miles carried. In our case, we limit the number of carriers going

on strike to two carriers in any region. In the bill endorsed by labor, they limit it, I think, to three carriers. These are some of the important factors that this committee is going to have to consider when they make their decision. If you can give us any opinion or contribute anything along that line, we would be very appreciative.

Secretary VOLPE. Congressman, I would have to say that I cannot agree that all regions of the country are exactly the same and, at least in my judgment—and I may be wrong—but in my judgment, I don't think you can say the same situation of guidelines would apply to all regions. It could be that a given region mainly produces agricultural products which are essential to the health of the Nation while another region produces automobiles. In one case, a selective strike would mean unemployment; in the other, it would mean less to eat. So I personally do not think you can generalize as easily as it would appear.

I will not, of course, dispute the fact that it would be very desirable if an effective mechanism could be established in the bill to determine when action is needed. It would make it a great deal easier for me as I assess the impact of a full or partial shutdown across the Nation, and I am getting, of course, reports two or three times daily of the current crisis, for instance.

Mr. HARVEY. My question is—certainly we both agree that if 100 percent of each of the three facilities in a region are shut down, that constitutes a national emergency. There is no question about that.

Secretary VOLPE. No question about that one.

Mr. HARVEY. As I get the effect of the UTU's announcement this morning that they plan to strike three additional railroads—Erie Lackawanna, that will boost the revenue ton-mile that will be shut down to 50 percent. They have announced they intend to strike the Louisville & Nashville St. Louis to San Francisco line. That is in the south district. That will boost the number of lines shut down to 54 percent of their load-carrying capacity or of the revenue-ton-miles. The western district will be up to 55 percent.

Now, my question is, In your judgment, are we approaching a national emergency there? Do we have to go to 100 percent?

Secretary VOLPE. I do not believe you would have to go to 100 percent, Congressman. I for one certainly would not think you would want to wait for 100 percent. I think you would reach a point where a selective strike would be extremely injurious to the Nation in many ways. The proposal of the administration leaves it to the board to determine when that point has been reached because of variations throughout the country.

Mr. HARVEY. I think the proposal of the administration, if you will pardon me for saying so, was submitted with the idea in mind of a partial operation situation and not with regard to a selective strike. I cannot conceive, for example, of the unions under any circumstances tolerating the decision to be made by the administration as to which line they could strike. The decision will be made by the unions themselves as far as a selective strike is concerned. That is what the courts ruled and that is what they are doing right now. Under the administration bill, it would leave it up to the administration to decide.

Secretary VOLPE. No, I do not believe it does, Mr. Congressman. I believe the administration bill allows selective strikes to be made by the unions.

Mr. HARVEY. It allows selective strikes, but the decisions as to which strikes are to be made by the board, if you will read the bill. I am quite sure of that.

I have some more questions, Mr. Chairman, but I will yield back my time at this time if you wish to have somebody else question.

Mr. DINGELL. Mr. Adams?

Mr. ADAMS. Mr. Chairman.

Mr. Secretary, it is a pleasure to see you here this morning.

Mr. Secretary, we had quite a colloqny yesterday with Secretary Hodgson on the manner in which the trucking industry and the maritime industry would be brought under the jurisdiction of the bill that has been proposed by the administration. I still have some confusion in my mind about it; therefore, I want to ask my question in this fashion: Under the administration bill, do you propose to simply wipe out the Railway Labor Act and put in place of it the Taft-Hartley procedures up to the end of the 80-day injunction, and at the same time, put under the Railway Labor Act the trucking and maritime industries? Is that how you are going to proceed?

Or is it instead that you are going to leave Taft-Hartley where it is and sort of jury-rig the Railway Labor Act and say, well, you are under Taft-Hartley until this point and then the Railway Labor Act applies? I am confused about it and it is a jurisdictional problem, frankly, that we have had between committees.

Secretary VOLPE. Let me say first of all that I will try to put to rest any confusion with regard to the reasons for including trucking.

Mr. ADAMS. No, no. I understand the reasons. That does not bother me. What I am trying to get at is: Does the administration contemplate lifting Taft-Hartley and making a composite bill that applies just to transportation, but simply uses the techniques we have used in Taft-Hartley, or do you propose taking transportation and putting it under the Taft-Hartley Act?

Secretary VOLPE. No, we do not propose to put transportation under the Taft-Hartley Act. But in essence, the administration bill builds on the Taft-Hartley Act provisions such as the 80-day cooling-off period, and then builds on top of that the additional three options that the President has.

Mr. ADAMS. Then I am going to assume that your answer means, and if one of the other members of the panel wants to state it to me differently, fine—I am going to assume what your answer contemplates is that we are going to draft a bill for transportation which will replace the Railway Labor Act but will put Taft-Hartley procedures within it and will put the new options which you have proposed within it so that you will have remaining in this country two types of labor acts—the Taft-Hartley Act for everything except transportation and a completely new bill that will apply to all transportation modes. Is that correct?

Secretary VOLPE. That is correct, sir.

Mr. DINGELL. Will the gentleman yield, just to keep the record straight?

Mr. ADAMS. Yes.

Mr. DINGELL. Mr. Secretary, you may not want to do it at this time, but if you will ask the gentlemen at the table there to submit for the record what residuum of the Railway Labor Act provisions

would continue to be enforced and applied under the procedures of H.R. 3596, which is the administration bill, and what will not, so that we have the legislative history clear before us as to what we have done and so, in the event of litigation later, as there certainly will be, the courts will have guidance on this point.

Secretary VOLPE. We will be very happy to submit that for the record.

(The following information was received for the record:)

SECTIONS OF RAILWAY LABOR ACT TO BE REPEALED BY ADMINISTRATION PROPOSAL

The Administration proposal repeals the emergency disputes procedures of the Railway Labor Act, sections 5, 7, 8, 9 and 10 of Title I and sections 203 and 205 of Title II. The proposal brings the railroads and airlines under the basic emergency disputes provisions of the National Labor Relations Act, now applicable to other industries, with some changes and, of course, with the addition of the new alternatives provided by our bill.

The Administration bill also amends other provisions of the Railway Labor Act, replacing procedures which place excessive reliance on Governmental intervention in matters which should be left to the parties. The procedures which we would revise provide for adjustment of grievances and for negotiating new contracts.

Mr. HARVEY. Will the gentleman yield?

Mr. ADAMS. I am going to have to come back, anyway. I yield to the gentleman.

Mr. HARVEY. I brought this question up yesterday in the gentleman's absence, I believe.

Mr. ADAMS. I was present, but I was not certain what the Secretary of Labor's final determination was. That is why I was trying to get it from the Secretary of Transportation.

Mr. HARVEY. I was not certain, either, but I will read to the gentlemen the two lines included in the President's message in this regard. I quote from the President's message of February 3, 1971:

First, the bill would abolish the emergency strike provisions of the Railway Labor Act which now govern railroad and airline disputes and make all transportation agencies subject to the national emergency provisions of the Taft-Hartley Act.

Second, the bill would amend the Taft-Hartley Act and give the President three new options in the case of national emergencies.

I think it clear from that——

Mr. ADAMS. This is what I was concerned about. Mr. Harvey.

I would say to the Secretary, if you are going to place railway or transportation under the Taft-Hartley Act rather than having a separate act for transportation, you have one big jurisdictional problem in the Congress which this committee is going to have to start discussing immediately and resolve.

And second, you are going to have transportation mixed within the Taft-Hartley Act system, and I am not at all certain that you want that, for the very reason that you point out in your statement, which is that transportation, because of its tendency to be a monopoly—and I did not want to use that as a fighting word, but simply because it cannot be isolated into segments as easily as in other particular industries—you get to a national emergency situation very rapidly.

I have handled 80-day injunctions under the Taft-Hartley Act. I assume that the administration bill contemplates that you would have to have, then, the appropriate Department, either Transportation or

Labor, go to the Justice Department and file a case in the district court that says, we believe there is a national emergency because of selective strikes.

Is that correct?

Secretary VOLPE. Yes, that is correct, Congressman Adams. My General Counsel would like to amplify that answer, however.

Mr. BARNUM. Specifically with respect to your question about putting transportation under the Taft-Hartley Act, the bill before you is concerned largely with national strikes of the transportation modes. In the event of such a strike, we would use, first, the Taft-Hartley provisions, and second, the new options in this bill.

With respect to a strike that is not a national strike, however, it would still be treated by the Railway Labor Act which has now been, or would by this bill be, amended to include not only the railroads but also the airlines.

Mr. ADAMS. Well, on that second point, my understanding is that you are going to wipe out all of the lengthy procedures that are presently under the Railway Labor Act, particularly the National Mediation Board, the Presidential Emergency Boards, and so on, and start with, as the Secretary of Labor explained yesterday, a series of definite contract termination dates, and once that contract termination date had ended, both parties would be left with self-help. They could either go to selective strike or, I assume, to some type of selective lockout until such point as a national emergency determination was made, either by your Department or by the Department of Labor, and then you could use an 80-day Taft-Hartley injunction—is that not correct?

Secretary VOLPE. That is correct.

Mr. ADAMS. Now, I ask you this following question because of the difference between the Taft-Hartley and the Railway Labor Act present systems for determining when you can use emergency procedures. Do you not believe that you would be better off to have this committee write in definite procedures rather than letting it be on an ad hoc basis, as you indicated to Mr. Harvey?

I will say this, and again, you might want to consult with counsel. The Taft-Hartley Act, as I remember—you can correct me if I am wrong—requires that there be a threat to national health, safety, and welfare before it can be applied, which in the past has meant, for example, that if the automobile industry went on strike, this might be a very bad thing and hurt the region terribly, but it was not a national emergency so you could not use Taft-Hartley. Now, the Railway Labor Act at the present time requires that a dispute threatens to deprive any section of the country of essential transportation services. Now, that would allow you to apply the Railway Labor Act if, for example, a region of the country had crops rotting in the field and an inability to transport them and so on. Now, those are two of the tests used.

Now, the third one has been suggested by members of this committee. I have joined with some of them, though I am not stuck to it. It says that there be a percentage determined that would be automatic, so that instead of you sitting down or the Secretary of Labor sitting down or somebody in the Presidential Office sitting down and saying, we have to do something now, it is an emergency, you would have a definite set of criteria so you would call the U.S. attorney and say, the criteria have been met, file a case.

Which of those three options do you opt for, Mr. Secretary?

Secretary VOLPE. If I were concerned only with the easiest way out for the Secretary of Transportation I would rather have guidelines because it would be far easier for us to make that determination in accordance with a formula that has been established.

Mr. ADAMS. I assume from that that you are setting the last one aside. Now, which of the other two do you prefer? Because your bill does not state. Or if you want an ad hoc, say so.

Secretary VOLPE. The bill actually does give the President the opportunity to execute the options that are available in the bill without waiting for a total national strike. We only need a national emergency. At some point, it can be determined that even if, perhaps, two regions of the country were shut down, a national emergency would exist. In other words, as our bill points out, it leaves that option available to the executive branch rather than tying it down to a formula which might be very good from the point of view of making it easier to reach a determination, but might not be reliable because each region is different in what it produces or grows and in its modal mix.

Mr. ADAMS. Well, counsel may want to discuss it with me when I come back to it a little later. But my continuing question is what is your trigger that starts the process working? From your answers to Mr. Harvey and your answers to me, my understanding is that you have an ad hoc trigger, which simply means that when either enough pressure has built up or somebody in the administration decides that there is a national emergency, they trigger it.

Now, nobody has really discussed so far in the hearings the fact that we would be putting the President, whoever he might be in future years, into a tremendous box on these things if you do not set up either a standard such as I have mentioned or guidelines, because the pressures are going to be incredible to declare an emergency during the selective strike period which your bill contemplates. The Secretary of Labor said yesterday that you contemplate on the administration bill that there would be self-help and selective strikes after contract termination dates for whatever period of time until there was an emergency. I would like to get a definition so we can use it when we are discussing this matter later of what the administration's position is on the trigger. I will come back to this line of questioning, because I know you want to go on to others, Mr. Chairman.

Secretary VOLPE. I will be happy to submit an answer to that.

(The following information was received for the record:)

TRIGGER PROCEDURES IN H.R. 3596

The procedures established in H.R. 3596 are triggered by the same determination that is made in the Labor-Management Relations Act (Taft-Hartley). Initially the first determination is made by the President that a strike or lockout imperils the national health or safety. He then can appoint a board of inquiry to inquire into the issue and report to him. Thereafter, the President can direct the Attorney General to petition a three-judge District Court to enjoin the strike or lockout. If the Court finds that there is a national emergency or a threatened one, it may enjoin the strike for an 80-day period.

Mr. DINGELL. I think you are entitled to an answer to the question.

Mr. Secretary, do you want to answer the question?

Secretary VOLPE. The only answer I can give is that although I appreciate the fact that this places a President and an administration

in the very difficult position of determining when a national emergency exists, I think this is a responsibility that the President is willing to undertake. If it could be defined as easily as two and two are four, that would be fine. I do not think that it can be defined by a formula. I would hope that such a formula could be developed. And if one can be devised, I certainly would accept it.

Mr. ADAMS. Mr. Secretary, that is the reason some of us have opted, at least at this point, for a different type of bill, which would leave the parties with a great deal of self-help and put a statutory limitation on what is an emergency because at least I cannot determine how otherwise you are going to trigger this mechanism. If you are going to leave it to a President and he goes through what we go through everytime one of these strikes comes up from the parties on both sides, it gets very difficult.

Mr. BARNUM. May I just respond to Congressman Adams' observation that there is nothing under the existing bill that permits us to determine when there is a national emergency and therefore the President should act.

Mr. DINGELL. Mr. Adams' statement was that there is no real objective standard now.

Mr. BARNUM. Yes; that is stated more succinctly than I did, Mr. Chairman.

Of course, there is case law on what constitutes a national emergency. And this has arisen under the Taft-Hartley law in the past.

Secretary VOLPE. And the President had to utilize that and make that decision.

Mr. ADAMS. There is a certain amount of case law, but I might state to the gentleman that I have been a party on behalf of the U.S. Government in putting in a Taft-Hartley injunction just simply because both parties preferred to have it go in. There was no necessary objective standard at all on the two parties before the court. It just happened to be a particular labor union and particular industry that decided they were ready to go with an 80-day injunction. And nobody objects. It happens.

I am not quite sure that that is the way that we ought to proceed with a national emergency. Because remember, you are contemplating in your bill definite contract termination dates without agreed contract dates, as soon as that contract runs out, a certain number of unions can go on strike, a certain number of railways can put in different work rules if they want, a certain number of industries can lockout. So it is self-help. Your situation is determined very quickly but in a spotty fashion.

Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Kuykendall?

Mr. KUYKENDALL. Mr. Secretary, I realize that your primary purpose, of course, here is as an advocate for an administration bill. I fully realize that it is not your position here to be critical of any of the other positions.

Secretary VOLPE. I have not done so.

Mr. KUYKENDALL. Mr. Secretary, you will find that this is a very conciliatory committee, that we, of course, expect you as an advocate. But we also not only now but in the next weeks, need your constant answers, your constant advice, your constant help in line with your

attitude of realizing that whatever this committee comes out with will be the final answer.

I think it should be interesting to note as far as you are concerned that seldom does legislation from this committee have much dissent on the floor. For instance, the Education and Labor Committee brings legislation to the floor and practically every time it is rewritten on the floor. This committee's legislation is seldom if ever handled that way on the floor. And the reason is that sometimes we spend months going back and forth between parties to reach agreement, there is a little example of that this morning.

Now, I think it is incumbent upon this committee and your Department, assuming that your Department would be the right Department, the logical Department to pretty much end up holding the trigger on this thing, to come up with a package where there is no jurisdictional doubt. If you are going to use parts of Taft-Hartley and parts of Railway Labor into the new act under the DOT in this committee, let us put it in a package and tie it up and say so, so there will be no doubt. I think you are aware of the time that we have spent on this, because there is this cloud of doubt hanging over all of us. Certainly we are not going to worry about Taft-Hartley if that is what we are going to use. That is what we have not gotten clear, and I doubt that we are going to get it clear in this testimony this morning, because I think there needs to be some work done on it.

So I ask of you and your staff, and I know we are going to do the same thing on this side, to look at parts of the package and when we put it together, not leave any doubts as to what the jurisdiction is.

Mr. Secretary, this is a very pragmatic committee, very open bipartisanship here, in the sense that here we see that all we are doing is a step-by-step process really just getting ready for the last step of going to the floor with legislation. So if all we are doing is allowing the little legalism or face saving or whatever you want to call it, then, yes, we will go ahead and say so and we will write it in the law. But let us for goodness sake realize that is what we are doing, is aiming toward finality.

I have practically no faith in a loosely drawn selective strike situation not deteriorating. Now, maybe in the next few weeks, I will have myself proven wrong; I hope so. But right now, I would not bet anything that I am wrong.

So I think when we start talking about these steps—the selective strike, the cooling-off period, then the final offer selection—I tell you right now I do not have any idea whatsoever that the first two will ever work. As far as I am concerned, the last one is going to be it. The first two may be face-saving devices, every once in a while it might work; however, if the last step becomes distasteful enough to both sides, eventually, the first two might work once in a while.

So I am questioning you here about what you think is the likelihood of the first steps working. Because you see, Mr. Secretary, we do not want this thing in our laps again. If the President guesses wrong on either of the first two steps as a solution, we automatically have it back in our laps.

So what is the answer to that? That is the question that was left totally unanswered yesterday, Mr. Secretary, and the one that we do need an answer for. What happens, other than coming back to us, if the President guesses wrong?

You may not like the word "guess," but that is what it is—an educated guess.

Secretary VOLPE. Congressman Kuykendall, I would say we would hope very much that the President guessed right, whether he be the present President or another President. I can only suggest to you that you are absolutely correct, that there are few cases when No. 1 or 2 might work. On the other hand, I think each individual case presents a somewhat different problem. One cannot say outright that steps 1 and 2 will not work—and you have not said that, because you have indicated, of course, that they might work on some occasions. I can only say to you that this is a very complex situation and I do not think any of us can say with a degree of certainty that we have the answer, and there are no "ands," "ifs," or "buts" about it. I have had excellent relations with this committee. I will personally submit to the chairman and the committee such additional evidence and material as we can put together in the next 2 or 3 days.

(The following information was received for the record:)

REASONS TO CHOOSE OPTIONS AFFORDED IN H.R. 3596

As I pointed out during my testimony, the decision to choose one of the options afforded in H.R. 3596 over another would be dependent on the particular set of facts at the time the decision is made.

Option one, an additional 30-day cooling-off period, might be chosen if the parties have agreed in principle and only additional time is needed to arrive at a final contract.

Option two, partial operation, might be employed when a series of selective strikes imperil the national health or safety, but only because certain essential goods are not being moved.

Again, I want to make clear that the option chosen would be governed by the facts available at any given time.

Secretary VOLPE. As far as I am concerned, consistent with the President's willingness to sign the bill, I will be satisfied that the judgment of this committee and the Congress is something that I could work with.

I would certainly enforce whatever bill this committee and the Congress decided to approve—provided that it was acceptable, of course, to the President.

Mr. KUYKENDALL. In the use of the first two steps, certainly we hope it never gets that far. And the attractive thing about the final offer and selection solution, which is the only really unique idea in labor relations in recent years that I have seen, is that it is not attractive in the end to either party. And the availability of that, Mr. Secretary, after the failure of either the 30-day cooling off period and/or the selective strike, the availability of that as an automatic choice of the President, in my opinion, would come near making one of the first two work. Because I do not think either management or labor is ever going to look forward to the final offer selection method: that is why I like it. They are not going to look forward to it, they are afraid of it, both sides equally. So would not the fact that they are afraid of it and it is sitting there always as a final threat, would that not be likely to make one of your first two choices work?

Secretary VOLPE. It might well do that, Congressman Kuykendall. On the other hand, I think that a possible result—and I look at it as a possible result—is that this could prolong further what you and I recognize is a pretty long procedural series of steps. On the other

hand, with the one option proposition the President has proposed, neither of the sides to the dispute is going to know which option the President is going to choose. Therefore, the likelihood of their bargaining, I would say, harder than they normally might is greater because they do not know which of those three options might be chosen, but do know that only one may be chosen.

Now, if you have all three options, then you have the first and you have the second, before they get down the road to that third one which, as you have so well indicated, neither side particularly wants to have chosen.

Mr. KUYKENDALL. The reason I keep pressing you on this is almost always, I can understand, the opposition's position. However, I simply do not understand your position as to why you want this method. Because it seems to me that it is totally self-defeating.

Mr. ADAMS. Would the gentleman yield at that point?

Mr. KUYKENDALL. Yes.

Mr. ADAMS. Following Mr. Kuykendall's point, Mr. Secretary, both your partial operation system and your 30-day cooling-off system, the partial operation is limited to 180 days, the cooling-off period is limited to 30 days. As I understand it, under your bill, both parties could simply hold out for that period of time and then I understand we would get it back, would we not?

Secretary VOLPE. Yes; if the President chose that 30-day option.

Mr. ADAMS. Or if he chose the partial operation, we would get it back in 180 days, would we not?

Secretary VOLPE. Yes; provided that nothing happened in the meantime.

Mr. KUYKENDALL. All right, let me pick up this. I do not know whether there is any basis or this is one thing that has kind of evolved here, or it is an illusion—but this illusion is a fact, whether it has any substance or not. Presently it seems that the image is that management does not mind going to Congress and labor does not want to go to Congress. Now, this is what has emerged, rightly or wrongly, Mr. Secretary; that is what has emerged.

OK. In your—or rather. the administration's—you are here to sell it. but you do not own it; in the administration's bill. either side could deliberately force the Congress to do its own will, just as deliberately as could be.

Secretary VOLPE. No; they could not if the third option were chosen.

Mr. KUYKENDALL. Well, all right. That is what we are talking about there. Either of the first two options——

Secretary VOLPE. Yes, under the first two options, it could come to Congress if the President chose one of those.

Mr. KUYKENDALL. The thing I do not like about it is, if you choose the first two, you do not have the third one available.

Secretary VOLPE. That is right.

Mr. KUYKENDALL. Mr. Secretary, figure out the answer to that one, will you?

Mr. HARVEY. Will you yield right there?

Mr. KUYKENDALL. Yes.

Mr. HARVEY. Mr. Secretary, in view of what Mr. Kuykendall has said here—and I think you know this committee holds you in the highest regard—can you tell this committee honestly and truthfully, as the

President's adviser, that under these circumstances, knowing one of these alternatives expires in 30 days and the other alternative expires in 180 days and that you would then have to come back to Congress, that you, as his adviser, would recommend to him that he select either one of those alternatives under any circumstances? I cannot believe you would, but I would like your answer.

Secretary VOLPE. Congressman Harvey, within the administration, the President has many advisers. I am one of them. I make my position known. It may or may not exactly agree with the position of others in the administration. However, as you well know, when the President has made his decision as a result of the advice of his advisers, I as a member of his team am happy to support the decisions that are made.

Now, if I were making the decision alone, it might be a little different. On the other hand, that decision has been made. And just as when your committee makes a decision, you may or may not agree completely with every sentence or comma in the legislation as it finally goes to the floor, but you support it because of your interest in supporting legislation that you think is essential and necessary.

I am here to say that I have made my views known and the President and his other advisers have consulted on this and the product that is before you is the judgment of the administration and the President.

Mr. DINGELL. Would the gentleman yield?

Mr. KUYKENDALL. Certainly.

Mr. DINGELL. That may be a very good answer, but it does not respond to the question.

Mr. KUYKENDALL. I think it responded.

Mr. DINGELL. The problem here is that Mr. Harvey has asked whether under any set of circumstances you would ever recommend that any option other than the third be used by the President, as opposed to the other options—recommending a cooling-off period or a partial strike?

Secretary VOLPE. Well, it just comes down to a question of judgment, I think, the judgment of the President based on his experience.

Mr. DINGELL. Well, under the long history of railway labor difficulties, we have found that these problems continuously keep coming back and that the White House has continuously opted to utilize what essentially really comes down to enforcing compulsory arbitration of some kind to resolve these difficulties. Would it not be fair to infer, in the light of this history, that the choice of the President would always be what we are talking about here, the third option, essentially the arbitration or final offer selection, whatever you want to call it, to arrive at the solution of the problem as opposed to the other options? Is it not historically true that the White House has always chosen the final option?

Secretary VOLPE. Mr. Chairman, I have sat in on many of these negotiations myself, the latest an all-night session a few weeks ago. There are times when you can almost sense that the two parties are not very far apart and, in essence, you can draw a conclusion that you think a 30-day period will suffice to close the deal.

Mr. KUYKENDALL. Mr. Chairman, may I ask the Secretary, do management-labor people ever bargain in the daytime?

Secretary VOLPE. This one started at 6 o'clock.

Mr. KUYKENDALL. They are always going all night. You do not ever read about a daytime session.

Secretary VOLPE. I do not like nighttime sessions. I have not stayed up all night long for a long time.

I feel there are occasions when you do have some indication as to what the relative situation might be, whether it looks impossible, and then you choose option 3, or whether there would be an opportunity for either one of the first two options.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. ADAMS (presiding). Mr. Podell?

Mr. PODELL. Thank you, Mr. Chairman.

Good morning, Mr. Secretary. I am delighted to see you here again. I did note, by the way, from your testimony, that you are a lifelong member of the National Plasterers Union. I have never been a member of that union, but I have enjoyed that state occasionally myself.

Secretary VOLPE. I will not say to you, Mr. Congressman, what I said to Milton Berle when he made that comment to me.

Mr. PODELL. I am rather confused, because somehow, I see the administration proposal as a circle bill, because it comes back to Congress eventually. In effect, what you are doing is utilizing the more restrictive provisions of Taft-Hartley and eliminating the more liberalized provisions of the Railway Labor Act. The Taft-Hartley provides for action only in a national emergency while the Railway Labor Act provides for action whenever there is a denial of essential services.

I would like to eliminate the various periods and various appointments of boards, because when I discuss a final offer and selection, everything done by labor and management in their collective bargaining procedure will be aimed to that very end process. At no point do I think will labor or management make their final offer for fear of being bound in the event the President selects final offer as his solution.

By putting this Sword of Damocles over the heads of both labor and management that there will be an eventual end to collective bargaining, you are preventing either side from giving what they would consider their best offer. If they give their best offer now, the final conclusion is going to have to reflect something less than what had been bargained for in the previous negotiating periods.

What we are doing is frustrating that final selection, what I would consider proper collective bargaining between the two parties.

Second, the offer of partial operation strikes me as being one that is very difficult. I cannot conceive of partially operating a railroad, a trucking station, or an airline. If it is not going to work, you are going to have to enjoin the entire railroad line or the entire trucking line. Congress is going to wind up with the same ball of wax we started out with before this legislation and it is going to be right back in our laps.

There does not seem to be anything in the administration's measure which will stop the Congress from getting back the package once again. I think all it will succeed in doing is frustrate the collective bargaining process because you are putting an end to the collective bargaining position.

Secretary VOLPE. Congressman, I agree, of course, that this is a matter of judgment. You believe that it would frustrate bargaining. I am sure you sincerely believe that. I on the other hand—and in this area, I am in complete agreement with the position of the administration—feel that it will actually help collective bargaining. Neither side, as I think one of the Congressmen said earlier, desires that last solu-

tion, which is an imposed solution. And if management makes an offer which is too low, then the impartial board is going to select the labor offer because it has more merit. On the other hand, if labor's offer is so high that it is beyond what the board feels has merit, then they would select the management position.

I would think that this would drive the two parties a great deal closer than they normally might go. In other words, they would know that if they'd not have a proposal that had merit, the opposite side would get the nod insofar as the offer that was selected.

So, having participated in these negotiations on many occasions, it would seem to me, that when you have that kind of sword, and that is what it is in a sense, then you are going to get real bargaining. If you do not come to an agreement, you are still going to be a good deal closer than you would be if you did not have that situation prevailing.

Mr. PODELL. As you would indicate, Mr. Secretary, we certainly disagree on judgment. I cannot concieve that I, representing management, or labor, would proceed to give an offer that we consider our final offer during the negotiating period and then wait for the final offer selection to be invoked, knowing full well the best offer or an area in between will be selected by someone else.

Secretary VOLPE. There cannot be an area in between, sir.

Mr. PODELL. It would have to be one of the two offers?

Secretary VOLPE. That is correct.

Mr. PODELL. I would not give my best offer at any one point, because ultimately I will have to go through final offer selection. So all of these cooling off periods and all of these waiting periods are just a waste of time. We might as well go to the final offer in the first place and save a lot of effort on everyone's part. That would seem to me to be the resultant effect of your bill and the entire collective bargaining process would therefore be completely eliminated and unnecessary.

I just have one more thought I would like to make. I have heard, or at least there is a rumor that in the event that there is not a substantial breakthrough in the rail strike, the administration may induce another possible solution. Are you aware of this or is this merely another unfounded rumor?

Secretary VOLPE. All I know is that any prudent administration would certainly be considering possibilities that might have to be faced up to in the future, whether that be 3 days, 3 weeks, or 3 months away. I can only say that at this time, we are watching the situation very, very carefully. We are very, very hopeful that the two parties will come to an agreement. I cannot say that they will. But we are staying on top of it.

I am receiving wires, for instance, from Governors all across the Nation which indicate the impact in their States.

All I can say is that we do not look forward to submitting anything to the Congress, because whatever we submit is not going to be easy to put together. We are hoping very, very much that the two sides will bargain this thing out and come to an agreement.

Mr. PODELL. Is it not a fact that under the administration bill, after the final 30-day period, it is quite possible that the entire problem will come back to Congress?

Secretary VOLPE. Only if the President chose that option would it come back to Congress. If the President chose option No. 3, it would not come back to the Congress.

Mr. PODELL. In that event, the President has simply the following responsibility: If the union is a small one, he could possibly take a chance and invoke another one of his selections, so to speak. If it is a substantial union, rather than take a chance, he comes back to Congress and says, here, fellows, you break your heads with it.

Now, this does not seem to me to be a solution to the problem. That is why I call it the circle bill. I feel for some reason, we are going to wind up with the package all over again and I cannot see any sense in passing out legislation that will have only a temporary effect and have no real value in the long run.

Secretary VOLPE. This is a matter of judgment, Congressman.

Mr. PODELL. I thank you, Mr. Secretary.

Mr. ADAMS. Mr. Thompson?

Mr. THOMPSON. Thank you, Mr. Chairman.

Mr. Secretary, I appreciate immensely your being here. I am sorry I was not here for the opening statement. I must confess that I put some visiting firemen from Georgia and members of our reapportionment committee from our State general assembly ahead of this meeting this morning as well as yesterday morning. I hope you will forgive me for taking such a personal interest in congressional reapportionment.

Secretary VOLPE. I would be doing the same thing, I think.

Mr. THOMPSON. I would like to express a concern that I think has been adequately expressed by other members of the committee, and I think it is felt not only by members of the committee, but indeed the entire Congress. We are, in effect, getting fed up with every time we turn around, finding ourselves saddled with the problem of settling a rail strike. Whatever comes out of this committee, we would like to see, in my opinion, legislation that is going to be of a permanent nature and that will not end up having alternatives by which we are going to have the problem dumped in our lap after a 30-day period or a 60-day period or whatever it may be.

I must confess that I am not very sympathetic with the administration's bill that does not grant that, once you make a selection, you cannot deviate from that particular option. To me, it is much more reasonable to maintain flexibility, because I think conditions do change and they change during a 30-day period. I simply can't accept that.

So all I am stating to you is a personal opinion that I have. I would hope that the administration would take a second look at the piece of legislation they have, with the thought of possibly adopting a little more flexible attitude and incorporating some of the provisions possibly of the Harvey bill, which in my personal opinion, makes more sense.

Secretary VOLPE. Thank you, Congressman Thompson. I can certainly indicate to you that there is absolutely no question in my mind that our objectives are exactly the same. It is a question of judgment as to how you achieve that objective. That objective is to see to it that these transportation disputes do not come up to the Congress for the Congress to resolve. The Congress has a great deal of important business, and it should not be in the labor-management relations business, except to set and establish the rules by which both labor and management will live.

I think that Secretary Hodgson has pointed out in a letter to Congressman Harvey that he hopes that a dialog can be maintained and

that as a result of the constructive efforts of the committee and of the administration, a good bill will result.

Mr. THOMPSON. May I ask one further question? Do you anticipate any emergency legislation in dealing with the current strike situations that we now have?

Secretary VOLPE. I cannot anticipate it at this time, Congressman Thompson. However, we only serve as a conduit for the Secretary of Labor, giving him all of the information that we can gather as to the impact that it has on the Nation, the various regions, and the individual States. It is primarily their decision. I can indicate to you that we are all extremely concerned with the situation as it now stands not only in one State but in many States throughout the Nation. And we are on top of it.

I spent a couple of hours yesterday afternoon and an hour last night discussing this very problem, both with my staff and with people in the Labor Department. So we are on top of it and certainly will do everything we can to bring about the conclusion of a voluntary agreement on the part of both sides, realizing, however, that the point may well come where something must be done, if a voluntary agreement cannot be reached.

Mr. THOMPSON. Well, it is my hope—I do not want emergency legislation, believe me. I realize that there are people being hurt financially, I realize there are inconveniences. I think that all forms of transportation are helping in various areas to alleviate some of the real critical situations. I know I was concerned about the poultry situation in north Georgia. I have been in contact with the poultry association there and I find that we are getting grain shipments in through lines that are not struck and through the trucking industry and that the Government has, of course, removed the weight limitation on trucks in order to alleviate this.

I do not want to see any individual hurt, whether it is a sand and gravel company or a coal company or grain producers or poultry. But I do feel that there are times when we are going to have to have certain economic pressures brought to settle some of these or come up with permanent legislation. I do not want another bandaid approach coming out of this Congress.

Secretary VOLPE. I prefer to see permanent legislation.

Mr. THOMPSON. So this is my feeling that I would hope that at the present time, you will try to allow the labor-management forces that exist to settle their strikes, hopefully that this can be done without creating a real national emergency.

Mr. KUYKENDALL. Will the gentleman yield?

Mr. THOMPSON. Yes; I will yield.

Mr. KUYKENDALL. There is a specter hanging over your head right now of approximately 5 weeks when the availability of any emergency legislation is pretty hard to consider, is there not, the time between a week from Friday and the day after Labor Day.

Secretary VOLPE. I am well aware of that, Congressman. I know what a great problem it poses for all of us.

Mr. THOMPSON. Thank you very much, Mr. Secretary.

Mr. ADAMS. Mr. Helstoski?

Mr. HELSTOSKI. Thank you, Mr. Chairman.

I would like the Secretary to respond in terms of evaluating one of the courses that might be instituted by the President. That is the

second point, when would a panel determine a partial operation would be feasible?

In your judgment, do you think this might run contrary to a possible solution that can be brought about through selective strikes? I know there is a time limitation that can be placed on this, 180 days—that it could not run beyond that point.

Secretary VOLPE. I want to make sure I understand your question, Congressman. Do I feel that the imposition of the 180-day restraint would be counterproductive?

Mr. HELSTOSKI. No; contrary to the *Hudson* decision which upholds the concept of a selective strike?

Secretary VOLPE. As a matter of fact, the legislation, my general counsel tells me, does not necessarily apply to a selective strike.

Mr. HARVEY. Would the gentleman yield right there?

Mr. HELSTOSKI. I yield to the gentleman.

Mr. HARVEY. I hestitate to correct the Secretary.

Secretary VOLPE. Until it becomes a national emergency.

Mr. HARVEY. Maybe I misunderstood you, but I think most of us up until yesterday were under the impression that the legislation did not apply to selective strikes, that partial operation did not include selective strike. But Secretary Hodgson testified yesterday very clearly in his written testimony that this was anticipated by the administration and that selective strike was included within the bounds of partial operation.

Mr. HELSTOSKI. That is the clarification I was looking for.

Secretary VOLPE. Only if it is determined that there is a national emergency.

Mr. HELSTOSKI. Thank you, Mr. Secretary.

Mr. ADAMS. Mr. Metcalfe?

Mr. METCALFE. Thank you, Mr. Chairman.

Mr. Secretary, I note that in your background, you have not only sat on both sides, you have really sat on three sides—on management, labor, and even as an arbitrator. I would certainly be cognizant of the fact that in the 2½ years you have served as the Secretary of Transportation, the one thing that has impressed me most is that in all of your decisions and those things that you have argued for, there has been foremost the public interest. So I recognize that you come here before us today in the interest of this public interest. Maybe I was expecting quite a bit of clarification. But we recognize that today, we have been meeting for 3 days; what we are trying to do is avoid these strikes that we have had. You cited three examples of how the Congress had come in with emergency measures legislation in order to avoid that. I was of the opinion that what we are striving for is a permanent legislation. But then you said there are no ifs, ands, and buts, which leaves me somewhat in the same position as my distinguished colleague, Mr. Podell, indicated in his questions. It seems to me that perhaps we ought to be able to eliminate that because he mentioned a circular motion and I am fearful that we need to come up with some other answers. I hoped that you would do it.

Now, the question I would like to ask is in regard to the statement that you made in which you indicated that this legislation—and I am assuming you mean the emergency legislation—will tell both labor and management that they can have the flexibility of bargaining and that

in the end, that will be the final settlement; in other words, labor and management will settle.

From your experience in the labor dispute area, both with management and labor, do you know of any other similar situation in your wealth of background where you could expect labor and management to come together and then make the decisions and then not strike, because when we say strike, we are talking about the public interest here again. Do you know of any instances where they have been able just to come together and arrive at conclusions without the threat of a strike?

Secretary VOLPE. In all the negotiations that I have had anything to do with, Congressman, there has always been the threat of a strike. I am talking now about my own personal experiences rather than the present dispute. The threat of a strike was a threat to both management and labor. One of the reasons why, as Congressman Kuykendall indicated, these sessions go into the wee hours of the morning is that fear as the deadline approaches. Both sides recognize that there is great injury to labor, management and to the public—this happened to be the construction industry that I am talking about—when a strike occurs. I am very happy to say that during the 2 years I served as chairman of the committee in Massachusetts, we did not have a strike, although we had some close ones. They finally were resolved without resort to arbitration, without resort to mediation, and between the parties themselves.

The threat of the strike is, I think, one of the driving forces that pulls the two sides together more closely than would otherwise be the case.

Mr. METCALFE. What I am concerned about is that there is always a possibility of the avenues that are left open—binding arbitration or maybe the President appointing this panel in which they have to go before the panel—but I am concerned about that one sentence in which you very optimistically thought that management and labor might sit down and then stay seated until such time as they work out an agreement. I need some more clarification on that.

Secretary VOLPE. I made that statement, Congressman Metcalfe, because I believe that neither management nor labor would want mandatory selection of one of the offers. I believe that as a result of their desire not to have that option selected, they would bargain more vigorously and come to an agreement than otherwise would be the case. I think that as a result of their desire not to have that happen, you are more apt to get a settlement voluntarily than you are now.

Mr. METCALFE. Then that is where the flexibility comes in that you mentioned there?

Secretary VOLPE. Yes, sir.

Mr. METCALFE. I have no further questions, Mr. Chairman.

Mr. ADAMS. Thank you, Mr. Metcalfe.

Mr. Secretary, I am going to yield to Mr. Harvey in a minute, but with your panel of people here and particularly with your solicitor, do you believe that the constitutional power of the Congress to establish this kind of legislation, such as you have here with partial operation and with final offer and selection—which in effect tells the parties the way they are going to work, the amount they are going to pay and the amount they are going to be paid—comes under an emergency power, or is this under simply the power to regulate commerce between the States?

Secretary VOLPE. I will have to check with my general counsel on that.

Mr. ADAMS. If you want to do that, if he does not want to give an off-the-cuff opinion, he can certainly submit it.

Secretary VOLPE. Most of them do not want to.

(The following information was received for the record:)

CONSTITUTIONAL AUTHORITY FOR THE PROPOSED LEGISLATION

The constitutional authority for the proposed legislation is the Commerce Clause (Art. I, section 8).

Mr. ADAMS. Let me give you a situation, because I do not quite visualize as a practical matter how your partial operation is going to work. You have a series of selective strikes started around the country. For example, we will say that the Southern Railway has been struck by a union and is therefore down. It has a picket line in front of it. Now it has been determined that a certain amount of produce must be moved under your bill. You have not answered my earlier question yet whether or not you are going to use a national emergency test or whether you are going to use an ad hoc test, or what kind of test you are going to use. But if the counsel comes up with the fact that we are just going to regulate commerce and you do not have to have a national emergency, I will accept the fact that you can have an ad hoc decision that produce is going to move on the Southern Railway.

Now, what do you do under your bill? Do you go in and get a court order that enjoins the picketers from interfering with people who cross the lines to carry produce?

Secretary VOLPE. The situation would have to be a national emergency, Mr. Chairman, in order for that to happen.

Mr. ADAMS. All right. In other words, you are going to stick with the national test, you are not going to use a regional test, but you are going to have to indicate that there is a national emergency.

Secretary VOLPE. As a result of one, two, or three regional areas in which the situation has become serious enough so that it is a national emergency.

Mr. ADAMS. All right. So now you get a court injunction that says to the picketing people and to management, all right, four trains are going to have to move. Is that what you are going to do?

Mr. BARNUM. I have not discussed with the Labor Department people who designed this bill exactly how they would contemplate implementing it in the event the partial operation option were selected. Without benefit of that conversation, however, I think they must be talking about a mandatory injunction, yes.

(The following information was received for the record:)

MANDATORY INJUNCTION TO BE SOUGHT IF MANAGEMENT OR LABOR REFUSE TO ABIDE BY ORDER

Assuming a refusal by management or labor to abide by an order of the partial operation board, a mandatory injunction would be sought.

Mr. ADAMS. Well, I hope you will get this determined between the two departments as to just what you are going to do. Because what many of us have visualized, and this comes within your Department in terms of economic regulation as to whether there are alternative rail lines involved, is that a type of partial operation would be that

one line would operate and there would not be any pickets, and another line might be shut down.

Now, that is one kind of partial operation as opposed to what I gather you are talking about, and which I frankly can't reason all the way through as to how it works, of your saying throughout the country that you might have 75 percent of the rail lines down in a selective strike and having the Government ordering that commodities of a particular type were going through. Is that what you visualize that your bill does with partial operation?

Secretary VOLPE. That is correct, sir; except that I do not think we would be waiting for 75 percent.

Mr. ADAMS. Well, whatever.

Secretary VOLPE. Whatever the figure is.

Mr. ADAMS. Do you agree that after you have put in partial operation, you have solved the national emergency and if they had only 40 percent out before, another 40 percent could go out?

Secretary VOLPE. If that option were chosen, I guess you would be stuck with it.

Mr. ADAMS. Sure you would. In other words, the selective strike could start with 40 percent and if you solved that with partial operation that you are talking about, then 40 percent more could go out. Then you would go in and apply partial operation to that 40 percent. Is that not right?

Secretary VOLPE. I believe that is correct.

Mr. ADAMS. And we would finally get to 100 percent and your Department would have a monkey on its back.

Secretary VOLPE. I am afraid so.

Mr. ADAMS. Yes; it would, would it not, to determine what gets delivered where. So you would then be operating the national railroad system in terms of what commodities moved and what did not?

Secretary VOLPE. As a matter of fact, we would probably be determining not only what moved on the rail system, but also what products would move on all modes of transportation.

Mr. ADAMS. That is going to be my next question. Now, why do you not have the alternative in your package of doing in fact, by legislation, what you are going to be doing in fact, by practicality, which is seizure?

Secretary VOLPE. May I submit that to the chairman for the record?

Mr. ADAMS. Yes.

(The following information was received for the record:)

COMMENT RE PARTIAL OPERATION PROCEDURE VERSUS SEIZURE

The partial operation procedure is not at all equivalent to a seizure of the railroads. In the case of a seizure, the government takes over the entire management of the railroad. In the case of partial operation there would be a partial shutdown of all railroads or the selective operation of certain railroads. The purpose of a partial operation under our bill is to cause sufficient economic impact to encourage the parties to resolve the dispute. This obviously cannot be accomplished by "seizure."

Mr. ADAMS. Mr. Harvey?

Mr. HARVEY. Mr. Secretary, in line with what my friend from the State of Washington has just asked you, let me ask you about the feasibility of moving or of operating at something less than full capacity. I have been advised by representatives of organized labor,

for example, that they will not need an injunction and they will not need anybody going to court. If the President determines that a certain commodity is absolutely essential to the health or safety of the country, under those circumstances, they will carry those commodities. They advise me that they did this during World War II.

Now, my question to you is, How feasible is that? Is this true? Is it a feasible method of operation or is it not?

Secretary VOLPE. Partial operation is feasible, but the question comes on the degree of partial operation. The fact is that when you have a total railroad strike, all of the other modes put together can accommodate only 15 percent of the commodities, products, raw materials, and other goods that are transported by railroad so that the degree of partial operation would be a very great determinant as to whether or not it would be successful.

Mr. HARVEY. Well, let's just take an illustration. As I said to you, Secretary Hodgson said yesterday that the administration's partial operation alternative does include the selective strike. And let's just suppose that the unions desire to strike a particular carrier that is within the limits of any reasonable definition of selective strike. Something less than 20 percent of the revenue ton-miles, for example, would not normally affect the health and safety of the country. But let's just suppose that this particular railroad carries coal, for example, to the electric plants. This is a selective strike, now, mind you. But it carries coal to the electric plants.

Now, organized labor says: "We will carry that coal. You do not need an injunction. We will carry that coal." What is the position of the administration? Is this a feasible operation? This is what I am trying to find out.

Secretary VOLPE. Well, it would be feasible, I think, if the unions were willing to do it. There would be no problem there.

Mr. ADAMS. It is a 100-percent coal-carrying line. Are you going, during that period of time, to allow normal dividends, normal profits, normal bonuses, but require the men to continue to work for the wages that they had at the termination of the first contract? It gets very sticky, Mr. Secretary.

Secretary VOLPE. The law would not permit anything different. The bill requires that there be no change, except by agreement or board order, in the terms and conditions of employment. I do not believe there is anything in the proposed act which would provide for a termination of dividends.

Mr. ADAMS. Thank you.

Mr. HARVEY. Mr. Secretary, just to follow up the questions that I asked you, could you advise us, has the administration or have you requested the unions to carry any particular goods during the particular crisis that we are in right now? Here we are in a situation where—I forget what figures I gave you a minute ago, but very shortly, at any rate, if all the lines go down that the UTU has threatened are going to go down, we are going to have more than half of the Nation's load-carrying capacity shut down. Now, my question to you is have you or do you contemplate asking the unions to carry some of these essential commodities that I read about?

Secretary VOLPE. We have not asked the unions to do this. It has been our hope, practically on a daily basis, that there would be a set-

tlement. I think that with the strike becoming as widespread as you have indicated, Congressman, that there is a possibility that we might ask unions to carry specific goods.

Mr. HARVEY. That is a lot of "provideds" and I do not think it would be very feasible.

Secretary VOLPE. I do not think it would be very feasible at all.

Mr. HARVEY. Then you are changing your answer, because in the first hypothetical that I put to you, relative to carrying the coal to the electric plant in the strike, you answered you thought it was feasible, right?

Secretary VOLPE. Yes, in a given situation. I am talking now to the total picture. I do not think you could look upon it as a practical and viable alternative overall. It could satisfy a need or a demand in a given area for given products.

Mr. HARVEY. I just have one other question, Mr. Secretary, but getting back to the question of selective strike again, it would certainly appear as a result of the court decision, as a result of Secretary Hodgson's testimony yesterday, that the administration bill does include the selective strike provision; as a result of the Staggers bill introduced here before the committee; and as a result of the other bills that have been introduced by most Members, that some form of selective strike is going to be with us for years to come, undoubtedly.

Now, in view of that fact, my question to you is do you not think that as a matter of fairness, organized labor and management as well are entitled to have some sort of formula, as you call it, some sort of triggering device, written into law in this regard?

Secretary VOLPE. Congressman, if one can be written that would be fair, not only to labor and management, but also to the public and would make it easier for us in Government to operate, I would be all for it. My only caveat is that I am not certain that one can be developed, taking into consideration the total aspects of the variety of situations that can and do arise across the country.

I would only add that I would hope the last paragraph of Secretary Hodgson's letter is an indication that he is willing to engage in further dialog on this issue. As you know, they have the major role in drafting this legislation.

Mr. HARVEY. Well, we did not get much evidence of that yesterday, but perhaps we will in the future. I am not certain.

Anyway, thank you, Mr. Chairman.

Mr. DINGELL (presiding). Mr. Adams.

Mr. ADAMS. I just have one question, Mr. Secretary, that follows up on my other one on partial operation. As I understand it, after the contracts have terminated and you have had the selective strike and you go in with partial operation, management is entitled to self-help also, which means they could change the work rules or whatever they wanted to do. Suppose they change the work rules and you go in with partial operation. Are you going to require the men to work under the old work rules or are they going to be required to work under the new work rules but at the old wages?

Secretary VOLPE. You are into an area of legality, Congressman. That is what I have lawyers for.

Mr. Counsel, you are on the spot.

Mr. BARNUM. First, I would point out to you, Congressman Adams, that there is a specific provision in the law, section 404.

Mr. DINGELL. If you would yield, are you referring to existing law or the statute that has been proposed by the administration, H.R. 3596?

Mr. BARNUM. Yes, in the bill, on page 26 of H.R. 3596. That section states that nothing in this proposed law shall be construed to require any individual employee to render labor or service without his consent.

Mr. DINGELL. If you will yield, that is not responsive to Mr. Adams' question.

Mr. BARNUM. It is in part an answer to a question he asked earlier about injunctions. He is getting to what are you going to do with the men who are now told to go back to work. It is not a complete answer.

The first answer is he does not have to go back to work, he can quit. But as I understand the law as it is now proposed, the new work rules could be imposed. And since there is no new wage contract, presumably, he would be operating under the old wage contract.

(The following letter was received for the record:)

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., August 20, 1971.

Hon. JOHN D. DINGELL,
Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. DINGELL: During the hearing on Emergency Labor Dispute Legislation before your Subcommittee on July 29, 1971, I stated that during partial operation of a railroad, new work rules could be imposed (p. 258). While I clarified this point later in the hearing, I would not want to mislead anyone reading only my first statement on this question. For this reason, I believe that the transcript should indicate at page 258 that section 218(f) does not allow changes in the terms and conditions of employment unless agreed to by all parties or required by the partial operation board.

Sincerely,

JOHN W. BARNUM,
General Counsel.

Mr. ADAMS. Now, do you think that working under new work rules but at the old wages is going to sit very well with labor in the situation where you go in with your partial operation system? In other words, do you think this is going to produce a stable ability for your Department to operate partial operation?

Mr. BARNUM. It is the judgment of the Department of Labor that it is one of the viable alternatives, yes.

Mr. ADAMS. Do you not think that perhaps you should at least require a freezing of the situation as it was at the end of the contract?

Secretary VOLPE. I am sorry, Mr. Adams, I seem to have spilled my glass of water.

Mr. ADAMS. I think the water is rather deep, Mr. Secretary.

Secretary VOLPE. I think the situation we are now in is the result of what you are saying. I am hopeful that the legislation that this administration and this Congress produces will avoid those kinds of situations.

Mr. ADAMS. Well, I will let the others question. But what I am trying to point out to you is that I feel there are some imperfections in the law that has been brought forth here. And if you have a situation like that which is presently going on, in which you have a strike and everybody is out and somebody puts in new work rules, they are

not going to apply to anybody and the matter is going to stay at loggerheads so that both parties are left equal. But if you start the Government moving in and establishing operation and you do not seize, which is something harmful to management, as well as putting an injunction on men to require them to work, which is harmful to the men, you are going to be in a situation where you are going to have the Government in effect saying the contract is over, but if you want to keep your job, you have to work under the conditions that management says but at the old wages. And that is going to be a very tough situation. I think that this committee is going to have to look very carefully at that type of provision. And it gets even worse if you terminate all contracts at the same time, so that everybody is left with self-help and as a retaliation to selective strike, you have management across the board putting in new work rules in every industry, then I am not certain that your bill produces a movement toward settlement but may produce a movement toward springing apart. So your help in this matter is solicited, at least by this member.

Mr. DINGELL. If the gentleman will yield, is this not precisely the situation we find ourselves in now? You have some strikes, you have some areas where the men are still working, and you have a large number of areas where there are at this time new work rules, new pay scales, changes in the employees' condition very much to their detriment?

For example, I have been informed this morning by letter that certain employees are getting no lunch hour. I have been advised by letter that men are being compelled to take pay cuts for doing the same work, that they are being compelled to work longer hours, that the overtime provisions of these agreements are being affected.

Now, I get the distinct impression that this is being done to bring about a national strike. Now, how are you going to be assured that if this comes about, management is not going to be afforded, under the provisions to which Mr. Adams is addressing himself, that the situation is not going to be so engineered that labor is going to be compelled to go beyond a selective strike to a national strike? How would you be protected, either against the roads which are struck and which are engaged in partial operation, or the roads which are not struck but where the work rules are changed to guarantee that the situation will not be pushed past a point where you are going to have strikes in spite of orders, slowdowns, and goodness knows what else, which labor is fully capable of doing, and a national strike?

Secretary VOLPE. It certainly is not going to be easy under any circumstances, Mr. Chairman.

Mr. DINGELL. Yes, but, Mr. Secretary, once that option is exercised, you have no other options. You get one option.

Secretary VOLPE. That is correct.

Mr. DINGELL. If you are asking for a choice of options and whether or not we are in agreement with you as to those options, you have to understand, we still have to give you viable options, something that is going to work.

Secretary VOLPE. Yes.

Mr. DINGELL. This committee is trying to work with you to find out where the holes are and how to protect you so you do not get a bill that is going to kid you and kid everybody else and leave the situation that is at least as bad as that in which we are finding ourselves now.

Secretary VOLPE. I might change the k-i-d to k-i-l-l, Mr. Chairman. I do not want that kind of bill, either.

Mr. DINGELL. The question here is how are you going to meet the problem to which Mr. Adams is addressing himself? Apparently, the administration has not given it much thought. Now, you are a good soldier and you are sitting in the well, saying, this is ours and we are going to stick to it no matter how bad it may look. I respect you for that but we do not want legislation that we are going to be stuck with for the next 20 years that is going to be bad legislation.

Secretary VOLPE. Personally I do not have a rigid position, and I certainly would hope that my colleagues in Government and in the administration will take advantage of the discussion which has taken place—a very constructive discussion, I believed—in this committee both yesterday and today. Hopefully, we will be able to suggest ways and means by which these differences of opinion might be resolved.

Mr. DINGELL. Well, I have always found you to be a very fine person to work with, very helpful and cooperative. It occurs to me that one thing that had better be done is for you and your lawyers, when you go back down there, to not only take a look at the points that have been discussed by the committee this morning but also those of yesterday and try to talk a little commonsense to the other members of the administration on the points you have in this bill right before us. I hope you will do that and maybe give us some comments.

Secretary VOLPE. Yes, sir.

Mr. DINGELL. Mr. Helstoski?

Mr. HELSTOSKI. Pursuing the hypothetical situation outlined by Congressman Adams, what happens at the end of 180 days, when the second option would be implemented, assuming that that is so? Is the partial operation terminated? Is the contract kept at the time of the initiation of the strike in force?

Secretary VOLPE. That is correct, until 180 days is over.

Mr. HELSTOSKI. I thank you.

Mr. DINGELL. Mr. Secretary, does it not occur to you that if you get down to the point where you are going to have 180 days and then put yourself back in the hands of Congress that you are going to literally be compelled to choose the last option and virtually have, really, only one option, and that is the last?

Secretary VOLPE. Which option to choose is a judgment that the President would have to make.

Mr. DINGELL. Can you give us an idea of what are the criteria for choosing each option? I suppose you know what factual circumstances would be present that would cause any President to choose anything other than the very last option.

Secretary VOLPE. I would say first it would probably depend on which mode of transportation you were talking about.

Mr. DINGELL. Let's take rails. This is the one that is the most troublesome, as you recognize.

Secretary VOLPE. Well, I cannot agree, Mr. Chairman, at all.

It would depend, I suppose, on the report that the Secretary of Labor would make to the President as to the status of negotiations at the time that the President had to make his judgment. It could be that there might be only one point at issue. Unfortunately, in the present circumstances, that is not the—well, it is one point, but it is a rather large one.

Mr. DINGELL. It is the one point on which there is practically no movement.

Secretary VOLPE. That is correct, sir. But there could be cases where the wage situation was the only difference of opinion. And in that type of situation, if the difference between the positions was relatively small, I suppose that the judgment could well be that 30 days could wind it up. On the other hand, there could be a very complicated situation like work rules and in that circumstance one would probably not choose that option.

Mr. DINGELL. Well, let's apply this bill to the real world. You can have all the hypotheses you want and we can postulate all manner of circumstances in the rail situation, and that is what is really before us. But there is just no way of coming to a conclusion that under the situations, the factual situations, that face us in this industry, you are ever going to be coming up with any application of anything except the very last.

Thirty days is not going to help you in the impasse you are in. One-hundred and eighty days is not going to help you in the impasse in which you will find yourself. So really as a practical matter, the only thing we are discussing here in this bill is the last option. That is the only thing the President is going to exercise. He is not going to exercise the other two options in the rail situation we have before us now, is he?

Secretary VOLPE. I would say certainly in the case of this work rule dispute, because it is so complex, there would probably be no other answer.

Mr. DINGELL. So for all intents and purposes, we are right now down to the fact that in the real world in the rail industry and the difficulty we have before us, the last option is one which he simply has to exercise and he will exercise?

Secretary VOLPE. I would hope that these work rules would be straightened out, hopefully, once and for all during this period.

Mr. DINGELL. You actually right now have a partial strike going on, do you not?

Secretary VOLPE. That is correct.

Mr. DINGELL. And that being so, we are having a pretty good example of the kind of situation Mr. Adams has been referring to, a situation where in some railroads, they are working. And as Mr. Adams has pointed out, the language of page 26, section 404 to the contrary notwithstanding, employees are working on a few roads, or some roads, or the majority of the roads. Some of the roads are shut down and the roads that they are working on are giving their employees a hard time. They are imposing work rules that are very different and so forth. And this bill here just truthfully does not protect them in that area, does it?

Secretary VOLPE. The fact is, however, Mr. Chairman, that the settlement would be retroactive.

Mr. DINGELL. Well, one must understand that that may be so, but this situation has been going on since Hector was a puppy. It has been going on almost during my entire service in the Congress. The fact that they would be retroactive does not really make a whole lot of difference to a fellow who is not getting a lunch period or is compelled to work excessive hours or is undergoing a pay cut.

The fact is, Mr. Secretary, you have two options. The Railway Labor Act gives 30 days plus 30 days for compelling employees to work. Taft-Hartley triggers an 80-day cooling-off period. In the case of the Railway Labor Act, the cooling-off period or putting the men back to work is triggered by a substantial denial of railroad service to any part of the country. Am I correct?

Secretary VOLPE. Yes.

Mr. DINGELL. Now, in the case of Taft-Hartley, what are the standards that are applied?

Secretary VOLPE. National emergency.

Mr. DINGELL. So you folks propose to substitute, then, in the administration bill, a requirement that the Secretary find a national emergency as opposed to a finding that some portion of the country is being denied substantial railroad service. Am I correct?

Secretary VOLPE. Except that a part of the Nation being denied transportation services may be a national emergency if it were of sufficient magnitude.

Mr. DINGELL. What I am really saying to you, though, is you are substituting a much heavier burden for the President to find—he must find a national emergency, and that requires much more serious circumstances than finding that a part of the country is being denied substantial railroad service, does it not?

Secretary VOLPE. It is not going to be an easy decision for any President to make.

Mr. DINGELL. Well, as a matter of fact, what he has to find is that there is a much more grave situation under the Taft-Hartley test than he would have to find under the Railway Labor test—much greater; much greater deprivation to the public, much greater hazard to the national interest. Is that not so?

Secretary VOLPE. That is correct.

Mr. DINGELL. In addition to that, the only thing he is going to get in addition to that is another 20 days.

Secretary VOLPE. Thirty?

Mr. DINGELL. No; it is 80 as opposed to 60. So he is only going to get an additional 20 days?

Secretary VOLPE. Yes, sir.

Mr. DINGELL. So this is not a viable choice, is that correct?

Secretary VOLPE. The final choice option, as I indicated earlier, would more than likely be the option that would be chosen. That would be my guess, unless it was a situation where the two parties were not far apart. Otherwise, it would seem to me that option No. 3, if I were to be asked to give an estimate of what I thought might be the picture in the future, would probably be the option that would be selected.

Mr. DINGELL. I read a part of an article that talked about a Japanese strike. A fellow went into a Japanese plant and looked around and saw men on two assembly lines working with red arm bands. He said, "What are they doing?"

"Oh," was the answer, "they are on strike."

"What do you mean? They are working just as hard as anybody else does."

"Yes, but there are some economic sanctions that are being imposed here, and at the conclusion of this strike, why, there will be economic adjustments made."

The interesting thing that flowed from this whole business, at least in my mind, is maybe we ought to just appoint a receiver for the railroads and let both sides work for nothing. Maybe we ought to utilize seizure, keep the roads moving, let the economic sanctions come into play at the conclusion and then let the folks go off and negotiate under the kind of penalties that would fall on them in that set of circumstances.

Why is that not a viable fourth option for the President?

Secretary VOLPE. I applied that once myself, Mr. Chairman, in Massachusetts. The State took over the Metropolitan Transit Authority for a period of about 60 days and operated it.

Mr. DINGELL. It worked pretty well, I will wager, did it not?

Secretary VOLPE. The dispute was resolved and the people got service.

Mr. DINGELL. Maybe this committee should give consideration to that. I recognize that you are not able to endorse it here publicly, but we do have a little bit of experience that says this is not altogether necessarily a bad fourth alternative for the President.

Mr. Secretary, I would just like to give a little bit of historical illustration. If you will remember, when the machinists struck the airlines some time back, the President established an emergency board and then when the strike did occur, Secretary Wirtz came up here before this committee and testified that there was no national emergency. So returning to the kind of pattern and situation I am talking about, you might find you would not be able to sustain the charge that there was a national emergency, let us say, in the case of an airline strike, which would not be presently subject to the tests of the Railway Labor Act as opposed to the Taft-Hartley Act.

Secretary VOLPE. It was only one airline and generally speaking, we have more than one airline——

Mr. DINGELL. Mr. Secretary, it was five trunklines. I fly between here and Detroit, and let me tell you, it may not have been a national emergency, but it was a big problem to me.

Secretary VOLPE. My General Counsel tells me he has to make a correction in something that was said.

Mr. BARNUM. In response to Congressman Adams' question concerning what would be the work rules in the event of partial operation, I would point out that on page 7 of the proposed bill, in subsection (f), is the following language:

> Until the board makes its determination—this is the board that is conducting the partial operation—and during any period of partial operation ordered by the board, no change except by agreement shall be made in the terms and conditions of employment.

There is then a proviso that if, however, the board determines that the existing work rules are inconsistent with the concept of partial operation, then changes to that end may be made.

Mr. ADAMS. May be ordered then?

Mr. BARNUM. The next sentence reads if the board determines that the application of any existing terms and conditions of employment is inconsistent with the terms and conditions of partial operation, the board may order——

Secretary VOLPE. Not management unilaterally.

Mr. BARNUM (continuing). The suspension or application of that term but only to the extent and so on.

Mr. ADAMS. Thank you.

Mr. BARNUM. I apologize if I misled you before.

Mr. DINGELL. Are there further questions of the Secretary or the gentlemen with him?

(No response.)

Mr. DINGELL. Mr. Secretary, it has been a pleasure and privilege to have you before us. We thank you for the very helpful responses to the committee. I suspect there are some answers you may want to give or some corrections to the record you may wish to make. That privilege will be given to you and the record will remain open for a time, I assume a week or so perhaps.

Secretary VOLPE. I hope the committee will forgive me if I was not quite as wide awake this morning as the Secretary of Transportation usually likes to be.

Mr. DINGELL. I gather from my colleagues up here that you were more awake, more alert, and more responsive than was the Secretary of Labor yesterday.

Secretary VOLPE. I do not want to comment on that except to say I have not had much sleep during the last 2 or 3 nights.

I thank you.

Mr. DINGELL. We thank you.

The subcommittee will stand adjourned until 10 o'clock on Tuesday next.

(Whereupon, at 12:15 p.m., the subcommittee was adjourned until Tuesday, August 3, 1971, at 10 a.m.)

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

TUESDAY, AUGUST 3, 1971

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order as we continue hearings on legislative proposals dealing with the settlement of transportation labor disputes.

Our first witness this morning is our colleague from the State of Michigan, the Honorable Charles E. Chamberlain.

Welcome, Mr. Chamberlain. Please proceed as you see fit, sir.

STATEMENT OF HON. CHARLES E. CHAMBERLAIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. CHAMBERLAIN. Mr. Chairman and members of the subcommittee, I am grateful for this opportunity to come before you to present my views on the question of improved settlement procedures for national emergency labor disputes. I am pleased to join as a cosponsor of H.R. 9088, referred to this committee on June 14 of this year, which would amend the Railway Labor Act to provide more effective settlement procedures in rail or airline disputes threatening to create a national emergency.

I start out with the firm conviction—shared by most Members of the Congress, I am sure—that the dispute settlement provisions of the Railway Labor Act badly need revision. This 45-year-old statute, enacted in 1926 and only slightly amended since then, has shown itself to be increasingly ineffective in resolving without strike or lockout the numerous labor-management impasses which fall within its jurisdiction, particularly those in the rail industry. Eight times during the last 8 years, Congress has had to step in with ad hoc legislation to prevent crippling rail strikes or to end nationwide rail strikes which had already begun. The strain on Congress has been accelerating; four of these eight instances occurred within a 14-month period during 1970 and 1971.

Although some persons and interests may be satisfied with this kind of piecemeal special legislation, most are fed up with it. They are unhappy because they believe that Congress should not be in the labor

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arbitration business. They resent being faced at ever more frequent intervals with crisis situations, creating stress for all and making a sound and reasoned judgment hard to achieve. They are frustrated because the ad hoc laws passed under these conditions have settled virtually nothing; they have only bought time. For example, our latest Congressional effort, Public Law 92–17, enacted May 18 of this year, only postponed a strike or lockout in the rail signalmen's dispute until October 1; the law did not settle the issues. The Congressional effort before that, Public Law 91–541, approved December 10, 1970, stopped a nationwide rail walkout but did not end negotiations between the carriers and the United Transportation Union; that dispute still is simmering dangerously. Another ominous cloud is forming on the horizon from the contract negotiations now going on between the rail carriers and six shopcraft unions. These are the same principals whose inability to come to agreement in 1967 led to three Congressional laws before that dispute was "mediated to finality." These are the same principals whose failure to negotiate their own settlement in 1969 required two more congressional statutes before a contract was put into effect.

The members of this committee have before them various legislative proposals in the dispute settlement area. As a matter of fact, numerous bills on this subject have been brought before the Congress during the past several years, although no hearings were held on them. Last year, President Nixon proposed revisions in the emergency disputes procedures under the Railway Labor Act and the Taft-Hartley Act, recommendations which unfortunately received no action. This year he has resubmitted his proposals, which I find to be thoughtful and innovative ones. However, I believe that H.R. 9088, which I am cosponsoring, is superior to the President's proposal and in fact is the best alternative among the various suggestions before this Congress. H.R. 9088 is in the nature of a compromise, a middle road among these several approaches, and for that reason I believe most likely to win the support of both management and labor.

One of the strongest features of H.R. 9088, is that it preserves the right to strike. However, only selective strikes, subject to limitations defined in the bill, would be permitted. By means of this option, which may be exercised after present procedures of the Railway Labor Act have been exhausted without settlement, the proposed legislation safeguards the public interest while maintaining the strike as a cornerstone of free collective bargaining.

Another highly desirable aspect of H.R. 9088 is that it puts an end to the practice of running to the Congress to settle every emergency rail or airline dispute. Congress could take down its shingle as a labor arbitrator. Under H.R. 9088, the President of the United States is given the option, should even the economic pressure of a selective strike fail to end a dispute, to force a settlement by means of the "final offer selection" procedure. Since much already has been said and written about final offer selection, I shall not belabor its virtues except to emphasize that it, unlike arbitration, tends to bring together the offers of the contending parties.

Mr. Chairman and members of the committee, I urge you to report out a bill to revise the dispute settlement procedures of the Railway Labor Act. The patience of the American people is about at an end

with these seemingly unending crises and the failure of the Congress to provide effective tools for resolving them. It is time that the public interest be given a front seat if the integrity of the collective bargaining process is to be preserved and with it the support and respect of those who are so dependent upon the goods and services of this sector of our economy. I know that you will review most diligently and conscientiously the various alternatives before you, and I thank you again for this opportunity to present my views in behalf of H.R. 9088.

Mr. JARMAN. Thank you, Mr. Chamberlain, for taking time out of your busy schedule to share your thoughts with us this morning.

Mr. CHAMBERLAIN. Thank you, Mr. Chairman, for affording me this opportunity.

Mr. JARMAN. Next we shall hear from the gentleman from the State of Illinois, the Honorable John B. Anderson.

Welcome to the committee, Mr. Anderson. It is good to see you.

STATEMENT OF HON. JOHN B. ANDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. ANDERSON. Mr. Chairman, as a cosponsor of H.R. 9088 which was introduced on June 14 by my good friend and colleague from Michigan, Mr. Harvey, I am pleased to present this statement in support of this most important and urgent legislation. The current rail crisis which has affected some 120,000 workers and immobilized about 20 percent of the Nation's freight traffic is couched in the larger context of negotiations which have dragged on for more than a year now, and which dramatically demonstrate the need for more effective emergency strike legislation.

The emergency provisions of the Railway Labor Act have been invoked 87 times since its enactment in 1926, or on the average of four times yearly. And work stoppages at the end of the 60-day period provided for in the act have occurred at a rate of more than one a year since 1947, and on eight occasions the Congress has had to enact legislation to end a strike. It is obvious from these statistics that existing emergency provisions are not only inadequate, but tend to discourage genuine bargaining since the disputants have come to regard the Emergency Board's recommendations as a basis for further bargaining rather than as a last resort. As President Nixon put it in his emergency strike message of March 2, 1970:

> Expecting that they might have to split the difference tomorrow, both parties find it to their advantage to widen that difference today. Thus the gap between them broadens; the bargaining process deteriorates; government intervention increases; and work stoppages continue.

The Harvey bill, of which I am a cosponsor, would reverse the current bargaining disincentive which is built into current law, by providing the President with additional flexibility in the form of new options and combinations thereof.

Under current law, as you know, the President can delay a strike or lockout for 60 days by appointing an Emergency Board to study the positions of both parties and recommend a settlement. If the 60-day period ends without a settlement, the President has no recourse other than to let the strike occur or to request special legislation from the Congress.

Under the Harvey bill, the President would be given additional authority to permit a selective strike, invoke an additional 30-day "cooling off" period, or resort to the "final offer selection" method. Under the Harvey bill, the President could use any of these options or any combination of these options. I consider this degree of flexibility one of the greatest strengths of the Harvey bill because it does introduce the element of uncertainty likely to induce an early settlement in the bargaining.

Mr. Chairman, I do not intend to discuss this bill in greater detail because I know Congressman Harvey has thoroughly covered the provisions of his bill in his own testimony before you last Tuesday. Let me simply say in conclusion that I consider the Harvey bill a workable compromise which all parties should be able to accept. But most importantly, it is designed with the national interest in mind, and the current rail crisis certainly brings home the urgent need to protect that interest through this kind of legislation.

Mr. JARMAN. Thank you for your thoughtful statement, Mr. Anderson.

Mr. ANDERSON. Thank you, Mr. Chairman, for the opportunity to express my views on this important legislation.

Mr. JARMAN. Our next witness this morning is Mr. Paul R. Chagnon, the Deputy Director of Inland Traffic for the Department of Defense.

Good morning, sir, good to have you with us.

STATEMENT OF PAUL R. CHAGNON, DEPUTY DIRECTOR OF INLAND TRAFFIC, MILITARY TRAFFIC MANAGEMENT AND TERMINAL SERVICE, DEPARTMENT OF DEFENSE; ACCOMPANIED BY JOSEPH J. COSIMANO, STRIKE COORDINATOR

Mr. CHAGNON. Thank you, sir. I would like to introduce Mr. Joseph J. Cosimano who serves as our strike coordinator for the Military Traffic Management and Terminal Service.

Mr. JARMAN. You may proceed.

Mr. CHAGNON. Thank you, sir.

My name is Paul R. Chagnon. I am Deputy Director of Inland Traffic for the Military Traffic Management and Terminal Service (MTMTS). MTMTS is a single manager agency operating under the Secretary of the Army performing commercial traffic management functions for all elements of the Department of Defense. The functions of logistics and traffic management are essentially divided among the shippers, the Army, Navy, Air Force, and Marine Corps, who decide what (or who) is to be transported, where the transport is to be furnished to, and when it must arrive. MTMTS provides the traffic management advice as to how the commercial transportation service is procured and used. Our scope of responsibility is limited to the continental United States, except for household goods which is a worldwide responsibility.

My personal qualifications lay in the area of domestic freight traffic management; however, I have developed data in the fields of passenger traffic and export and ocean terminal operations for the committee's use. Accordingly, I will attempt to answer or develop the answers for whatever questions the committee may have in these areas.

Since 1967, we have experienced eight rail strikes, one major motor

carrier strike, 11 airline strikes, five longshoreman strikes, and four ocean strikes that have required action on our part to insure a minimal impact on DOD traffic. It is recognized that these are not complete figures as some local work stoppages never come to our attention. Those that did come to our attention did not create a substantial impact. This was due to diversions to other means of transport, cooperation of labor and management to handle defense traffic, and normally only brief work stoppages. The length of the strike is, however, the most critical factor.

The ability of alternate modes to satisfy emergency requirements is limited. An example of motor carriers' ability to supplant rail carriage of ammunition demonstrates this. The capacity of a truck is normally limited to 40,000 pounds of ammunition. Up to 120,000 pounds can be loaded in a rail car. This means we would need as many as three times the number of trucks as rail cars. Between 150 and 200 rail carloads are necessary for a shipload of ammunition. Therefore, some 450 to 600 trucks would be required for a ship. This creates an extreme demand for trucks which even if obtainable would severely clog up the ammunition plants and ammunition ocean terminals which are most efficiently operated with rail service.

On the other hand, rail service cannot satisfy some needs we have for trucks. This is best demonstrated in the supply of perishable foods to the consuming posts, camps and stations. Motor carriers provide a scheduled, door-to-door delivery of mixed frozen and chilled perishables which is designed to satisfy the individual consumption requirements and refrigerated storage capability of the post involved. Railroads are not normally able to provide this "retail" type service because of facilities problems. While ultimate delivery from rail facility to user probably could be arranged it is inefficient and more expensive.

The question of internal DOD movement capability naturally rises in this connection. We have in existence a military owned vehicle plan which provides for the use of vehicles assigned to units throughout the United States. We believe that only the barest essential cargo could be accommodated by these vehicles and that at the sacrifice of other essential activities. Our estimate that was included in the report required of the DOD in Public Law 92–17 was that possibly 10 percent of defense rail traffic could be moved under the military owned vehicle plan if all other training operations were curtailed.

The second mitigating factor in easing the impact of strikes on DOD is labor-management cooperation. Our experience has been that whenever it was possible both labor and management have attempted to exempt military traffic from strikes. This has been most successful where our traffic could be isolated as in longshoremen strikes where special piers could be set aside or in ocean strikes where full shiploads could be marshaled. In these cases labor and management have agreed to conduct special operations in order to continue the flow of military supplies.

Motor carrier service has been continued during strikes in special cases where clearance procedures have been established through local organizations. These procedures have been hampered by reports of violence and consequent reluctance of drivers to operate even though cleared by union officials.

During strikes railroads normally attempt to handle defense traffic utilizing supervisory personnel. However, due to the scarcity of oper-

ationally qualified supervisors, operations are possible only for a short period. Here too, unions have agreed to handle defense traffic in limited fashion where it could be isolated, such as switching into ammunition terminals.

During a recent airline strike, DOD found itself with more than normal charter service as labor and management agreed to continue charter operations for the military. Military aircraft have a one-time lift capability of over 100,000 passengers within CONUS if committed solely to passenger movements. This is considerably more than the daily average of 7,000 military passengers traveling via commercial air. The use of all or part of this military lift, when commercial air operations have stopped, is contingent on other military priorities.

The third limiting factor of impact is duration of the strike. The following is an expert from the DOD report pursuant to Public Law 92–17 concerning the May 17 rail strike:

> While a short duration strike of one week or less would impact the Defense Department very little, a prolonged strike beyond seven to ten days would begin to seriously affect the Department as the strike duration increased. Primary impact would be evidenced by a shutting down of TNT production plants. This impact would be compounded with the shortages of aviation fuel, coal and fuel oil as a rail strike approached 30 to 45 days. Major projects and/or programs susceptible to disruption, delay and/or increased cost in a prolonged strike would include weapon and vehicle production and deployment; naval fleet support, defense housing, training, ecological undertakings and construction within the United States and overseas.

The final area of impact which I believe will interest the committee is the interruption in movement of sensitive materials. When materials such as firearms and ammunition of certain types are caught in transit by a strike they are highly vulnerable to theft. As the committee is aware such losses have been the subject of interest at all levels of Government and are viewed with great concern. We devote considerable effort to arrange following reports of such movements when a strike is forthcoming. If such shipments are frustrated, action is taken to provide protection either through local law enforcement bodies or through military guards. Thus far, we know of no losses of this material due to strikes. However, the possibility of loss is at its highest level when shipments are frustrated at points with unpredictable protective capability.

The Department of Defense favors the "Emergency Public Interest Protection Act" which was proposed to the Congress by the President and introduced as H.R. 3596 because it treats disputes which arise throughout the entire transportation industry, not just railroad transportation. This bill, in our opinion, provides the necessary framework for dealing with national emergency disputes for the entire transportation industry, which includes railroads, airlines, longshoremen, and trucks. H.R. 3596 is therefore the most responsive to the requirements of the Department of Defense.

I will attempt to answer questions in these areas the committee desires further information on. Also available for the committee's use is the MTMTS progress report for the third quarter fiscal year 1971, which contains comprehensive data on defense traffic.

Mr. JARMAN. Thank you, Mr. Chagnon, for adding to the record of the subcommittee on this subject.

Are there questions by the subcommittee?

Mr. METCALFE. Thank you very much, Mr. Chairman. I just have one question. I apologize for being late.

But, Mr. Chagnon, did you indicate what losses and what has been the result of the recent strikes as it affects the military transport of goods?

Mr. CHAGNON. Losses?

Mr. METCALFE. Yes.

Mr. CHAGNON. No, sir; we have no reports of any losses as a result. We did have several frustrated shipments; however, no reports of any lost shipments.

Mr. METCALFE. May I digress and ask the indulgence of the committee and also you to go a little afield and ask a question not related at all to the strikes but to the security precautions that have been taken.

As you know, the crime rate has been up, there are more weapons in wrongful hands and many of the weapons have come as the result of someone gaining knowledge that certain carloads contained weapons.

How widespread is this and what precautionary measures are taken to avert this theft of arms?

Mr. CHAGNON. I can't give you exact figures on how widespread the arms losses are. I can give you some idea of the procedures we go through to prevent the loss of the material. I will attempt to furnish you the information later on as to how widespread it is.

Mr. METCALFE. I would appreciate it very much.

(The following information was received for the record:)

IN-TRANSIT INCIDENTS CONCERNED WITH THE THEFT OF ARMS, AMMUNITIONS AND EXPLOSIVES

January 8, 1971—Minneapolis, Minnesota—There were 233 rounds of .38 caliber ammunition missing from a shipment that was shipped via Railway Express Agency from Letterkenny Army Depot, Chambersburg, Pennsylvania to the 934th Tactical Air Force Group, Minnesota-St. Paul International Airport, Minnesota.

January 18, 1971—One .45 caliber submachine gun was lost while in the custody of Railway Express Agency. Loss occurred between Atlanta, Georgia and Chicago, Illinois.

January 18, 1971—Charleston, South Carolina—Three .45 caliber pistols, one .45 caliber machine gun and three pyrotechnic pistols were lost while in the custody of Railway Express Agency. Shipped from Naval Ammunition Depot, Crane, Indiana, to Naval Supply Center, Charleston, South Carolina.

January 28, 1971—East St. Louis Railroad Yards—74 grenade housing assemblies from a box car containing 150,000. Shipped from Gulf and Western, Amron Division, Waukesha, Wisconsin, to Lone Star Army Ammunition Plant, Texarkana, Texas. Railroad car located in Madison, Illinois.

February 4, 1971—Portsmouth, New Hampshire—500 rounds of .22 caliber ammunition were stolen from dockside while awaiting transportation.

February 4, 1971—Boston, Massachusetts—There were 500 rounds of .22 caliber long rifle ammunition pilfered while awaiting transportation.

February 10, 1971—Marine Corps Base, Quantico, Virginia—Three .45 caliber pistols were missing from shipment received from Marine Corps Supply Center, Barstow, California.

February 11, 1971—Tooele Army Depot, Utah received a shipment of M–14 rifles from the Military Ocean Terminal, Oakland, California, via IML Freight, Inc. One box was short 10 weapons according to the marking on the outside of the box. List of contents was not available and the box lids were loose.

February 17, 1971—Homestead Air Force Base, Florida—100 rounds of 20 mm. ammunition was lost in transit between Lake City, Missouri and Homestead Air Force Base, Florida.

February 21, 1971—Washington, D.C.—Four .22 caliber rifles, scopes and tripods were lost in shipment from Philadelphia, Pennsylvania to Roanoke, Virginia. Material was not transferred from Allegheny Airlines, to Piedmont Airlines at Washington, D.C.

February 22, 1971—Buzzards Bay, Massachusetts—20,000 rounds of .22 caliber ammunition shipped from Naval Ammunition Depot, Earle, New Jersey via the Jersey Seaboard Line was not received by the Massachusetts Marine Academy, Massachusetts.

February 26, 1971—Rock Island Arsenal, Illinois—An unserviceable .45 caliber pistol was stolen from a Tri-State Motor Transit Company vehicle after leaving Albany, New York.

March 2, 1971—Rock Island Arsenal, Illinois—Between February 26 and March 2, 1971. Railway Express Agency inventoried a shipment of 126 boxes of unserviceable, unrepairable weapons and parts received from Anniston Army Depot, Alabama on November 9, 1970. Shipment was short one M–60 machinegun and a .50 caliber machinegun.

March 5, 1971—Waynesboro, Mississippi—Eight parachute flares, valued at $61.68, were removed from a Tri-State Motor Transit Company truck while in transit.

March 5, 1971—Wilmington, North Carolina—2,000 rounds of .45 caliber ammunition marked for Bandar, Shahpur, Iran, was lost while in the custody of Railway Express Agency between Washington, D.C. and Wilmington, North Carolina.

March 8, 1971—Newark, New Jersey—A .45 caliber unserviceable pitol was stolen while in custody of the Tri-State Motor Transit Company.

March 9–11, 1971—Rock Island Arsenal, Illinois—US Marine Corps Supply Center, Albany, Georgia shipped to Rock Island Arsenal, Illinois, weapons and weapon parts that were unserviceable and non-repairable, on February 26, 1971. Inventory made March 9–11, 1971 revealed one .45 caliber pistol without grips missing.

March 12, 1971—Seneca Army Depot, New York—One roll of explosives was removed from a box containing three rolls of M–186 demolition explosives while in transit between Canada and Seneca Army Depot, New York.

March 19–22, 1971—Marion, Virginia—Three signal flares were removed from a sealed freight car. Contractor was responsible as the Norfolk and Western Railroad had not accepted the car.

March 23, 1971—Five .50 caliber machine guns without barrels were shipped from Vietnam via the Military Ocean Terminal, Oakland, California to Tooele Army Depot, Utah, in sealed vans, were missing upon arrival at Tooele Army Depot, Utah. Shipping manifest seal numbers did not correspond with van seal numbers when compared at the Military Ocean Terminal, Oakland, California.

March 30, 1971—Anniston Army Depot, Alabama—One .45 caliber pistal was missing from a shipment of .45 caliber pistols received from Fort Rucker, Alabama. Although weapons were received on March 30, 1971, an inventory was not made until April 12, 1971.

March 30, and April 8, 1971—Anniston Army Depot, Alabama—37 CONEX containers were received from Norfolk, Virginia via R. C. Motor Lines. Inventory made on April 12, 1971 revealed that there were 441 M–14 rifles missing. Seals on the CONEX containers were intact and all boxes within the CONEX's were banded.

March 31, 1971—Sacramento, California—Shipment of weapons from Vietnam arrived Sacramento Army Depot, California short two M–16 rifles.

March 31, 1971—Sacramento, California—Two M–14 rifles were missing from a shipemnt of rifles delivered by the Hatfield Trucking Company.

April 7, 1971—Seneca Army Depot, New York—One roll of M–186 demolition charge was lost during shipment between Quebec, Canada, and Seneca Army Depot, New York. Car was improperly sealed.

April 7, 1971—Anniston Army Depot, Alabama—Shipment of M–14 rifles received from Germershein Army Depot, Germany on April 6, 1971 was short 4 M–14 rifles when inventoried on April 7, 1971.

April 7, 1971—Anniston Army Air Depot, Alabama—Four M-14 rifles that were shipped from Germershein Army Depot, Germany were lost while in the custody of Anniston Motor Express. Empty box for 4 M-14's found in sealed and padlocked van.

April 15, 1971—Anniston Army Depot, Alabama—Two .22 caliber rifles were discovered missing from shipment received from Perry, Georgia, when inventory was taken at Anniston Army Depot, Alabama.

April 16, 1971—Lexington Blue Grass Army Depot, Kentucky—1680 rounds of 5.56 mm. ammunition stolen from a Rock Island Railroad car at Winchester, Kentucky.

April 21, 1971—Southport, North Carolina—There were 840 rounds of M-16 ammunition lost between the Twin Cities Army Ammunition Plant, Minneapolis, Minnesota and Sunny Point Ocean Terminal, Southport, North Carolina.

April 23, 1971—Bellwood, Illinois—3 rounds of 81 mm. mortar shells were stolen from Railroad car when shipped from Lexington Blue Grass Army Depot, Kentucky to Camp McCoy, Wisconsin.

May 4, 1971—Ozark, Alabama—One .45 caliber pistol was stolen when left unattended on an Army National Guard Truck.

May 4, 1971—Navy Ammunition Depot, Earle, New Jersey—12 rounds of Bomb Nose Fuze M-9 stolen from railroad car #MP35382 when en route from Lone Star Army Ammunition Plant, Texarkana, Texas.

May 5, 1971—Lake City Army Ammunition Plant, Missouri—one round 20 mm. ammunition stolen in transit.

May 5, 1971—Fort Bragg, North Carolina—One M-16 rifle stolen in transit to Andrews Air Force Base, Maryland.

May 6, 1971—Letterkenny Army Depot, Chambersburg, Pennsylvania—5,000 rounds of caliber .22 ammunition stolen from railroad car en route to West Point, New York.

May 6, 1971—Morehead City, North Carolina—One .45 caliber pistol lost when a seabag containing the weapon fell from a truck while being transported from Camp Lejeune, North Carolina.

May 6, 1971—Fort Bragg, North Carolina—One .45 caliber pistol lost in transit from Andrews Air Force Base, Maryland.

May 12, 1971—Concord, New Hampshire—One stick 2x8 inch 40% gelatin dynamite stolen en route from Tri-State Van.

May 21, 1971—Tooele Army Depot, Utah—Four sub-machine guns #M3A1 and one sub-machine gun M-3 missing from Sea Land Van #33835.

May 25, 1971—Portsmouth, Virginia—1,000 rounds caliber .38 ammunition stolen in transit from a Navy barge.

May 27, 1971—Forbes Air Force Base, Kansas—Two M-60 Machine Guns lost by Railway Express Agency when shipped to Eglin Air Force Base, Florida.

Mr. CHAGNON. Each time a shipment of what we call sensitive material, which is firearms and ammunition for those firearms, and those things readily usable for illicit purposes are shipped, we provide a tracing service so that each day we get reports as to the progress of where that shipment is. If anything happens to frustrate that shipment we take immediate action to have either the local enforcement authority protect it or have military guards sent to the site and guard the shipment until it can be sent on its way again.

Mr. METCALFE. Have you intensified this protection recently?

Mr. CHAGNON. Yes, sir, we have. These procedures are relatively recent.

Mr. METCALFE. Thank you very much, Mr. Chairman, for your indulgence.

Mr. JARMAN. Mr. Harvey.

Mr. HARVEY. Mr. Chagnon, if I recall correctly, the Secretary of Labor recently said that overall, the country's rail shipments were affected approximately 50 percent during the recent selective strikes imposed by the UTU. Could you tell the committee approximately what effect was had upon military shipments? Would it be a corresponding amount or less or more?

Mr. CHAGNON. I think it was somewhat less, sir. However, we do have some information as to the impact on the Department of Defense.

The 10 railroads that were actually struck affected 14 Army major installations, 13 Navy, 21 Air Force, seven Marine Corps, and one defense supply activity. This represented all of the service to southern California, Arizona, and New Mexico. We were able, however, to les-

sen the impact of the stoppage through the use of alternate modes. We have some representative examples of just what happened to our shipments. For example, 1,044,000 pounds of class A explosives that were to be shipped from Anniston Army Depot on the Southern Railroad to the Military Ocean Terminal at Sunny Point, N.C., were diverted to motor carrier. This would be at an increased cost. However, the shipments were made and arrived there in time.

We had some carloads of small arms which relates back to Mr. Metcalfe's question, frustrated at Fort Worth, Tex., being turned over from the Missouri Pacific Railroad, which was not struck, to the Southern Pacific Railroad, which was struck, and we had to arrange for guarding of that shipment.

We had seven carloads of ammonium nitrate that were frustrated on the Union Pacific Railroad. We had to free these through the use of supervisory personnel of the Union Pacific Railroad. These were shipments into the Government-owned, contractor-operated plant at Cornhusker Army ammunition plant in Nebraska. Had the contractor complied with the instructions given by his contracting administration in time these would also have been diverted to the Burlington Northern Railroad prior to being frustrated on the Union Pacific Railroad.

Mr. HARVEY. I take it that is not a total list?

Mr. CHAGNON. No, that is not a total list. We can work up a total list and supply it to you if you would like.

Mr. HARVEY. I would appreciate it.

Mr. Chairman, I would ask unanimous consent that the witness have an opportunity to submit that total list of the military shipments that were delayed or were frustrated in one way or another and submit it for the benefit of the committee.

Mr. CHAGNON. I will be happy to do that.

(The following information was received for the record:)

MILITARY SHIPMENTS DELAYED OR FRUSTRATED BY THE JULY 16 TO AUGUST 3, 1971 RAIL STRIKE

Commodity description:	*Number of carloads*
Aircraft or parts:	
C–5 Radomes	2
C–131 structural parts	2
Simulators	2
Ammunition explosives and components:	
Ammunition components	2
Ammunition, 40 mm	16
Bomb fins	1
Bombs, 500 lb	6
Explosives	19
Propellants	1
Bulk commodities:	
Alum	1
Ammonia	2
Anhydrous ammonia	8
Blasting grit	3
Caustic soda	2
Desiccant	8
Lime	2
Molten sulphur	3
Oleum	15
Soda ash	4

Containers and packing material:	
Boxes, empty	9
Containers, ammunition	1
Containers, shipping	1
Containers, misc	2
Cylinders, empty gas	1
Lumber	1
Packing material	2
Tanks, dropable fuel	1
Engines, machinery or parts:	
Compressors	2
Engines	3½
Generators	3
Machinery	2
Fuel:	
Aviation fuel	4
Radioactive material	1
Material handling equipment:	
Cranes	1
Drag buckets	1
Forklifts	1
K-loaders	1
Miscellaneous:	
Anchors	1
Bats	4
Brass, expended	1
Brass, scrap	2
Cargo, general	5
Metal, scrap	3
Missile, system	3
Paper forms	4
Pile driver retainers	2
Pipe	2
Plastic foam	3
Tubing	1
Weapons	1
Subsistence:	
Cake mix	1
Canned goods	14
Dried milk	11
Flour	1
Perishables	10
Miscellaneous	15
Vehicles or parts:	
Armored personnel carriers	15
Army tractor tanks	12
Gama goats	8
Road sweeper	1
Semi-trailers	7
Tires	10
Tractor treads	2
Trailers	1
Trucks	2
Wheels	1
Total	284½

Mr. HARVEY. Let me ask one other question of the witness.

Selective strikes are just what they say they are, they are something less than a national strike.

Can you give us, in your judgment, any degree of tolerance of selective strikes as far as the military is concerned? In other words, is it

possible for you to say that the military tolerate 10 percent of the load-carrying capacity shutdown or 20 percent of the load-carrying capacity shutdown? In other words, where, in your judgment, would the breaking point be. I mean the point where the Congress or the Government would have to step in and end the strikes as far as the military is concerned?

Mr. CHAGNON. It is difficult to state it in terms of percentage. There are some railroads that are very important to the Department of Defense. For example, the Seaboard Coast Line is the only railroad that serves the Military Ocean Terminal at Sunny Point, N.C. This is the major export trans-loading point for ammunition. If this one railroad were to cease operation it would have an impact on us.

Mr. HARVEY. Is that the same railroad that has been on strike all these years?

Mr. CHAGNON. No, that is the Florida East Coast Railroad.

Mr. HARVEY. You said the one you were talking about is which one?

Mr. CHAGNON. The Seaboard Coast Line.

So the railroads aren't relatively equal in their importance to us.

Railroads such as the Western Pacific which also services the ammunition terminal in Concord, Calif., would be important to us. However, that terminal is also served by another railroad. So if one of them went out we could rely on the other.

Mr. HARVEY. I take it what you are saying is there is no general rule that you can give the committee as far as the military is concerned; is that correct?

Mr. CHAGNON. Yes, sir; that is correct.

Mr. HARVEY. In other words, it would depend on the individual rail line itself in your judgment as to whether or not it created an emergency as far as the Defense Department was concerned?

Mr. CHAGNON. Yes, sir; that is exactly so.

Mr. HARVEY. If it were a particular line that, in your judgment, did create an emergency for the Defense Department in its shipment of military supplies, let me ask you how feasible would it be for the union and the management of that company to attempt a partial operation and carry out a shipment of military supplies?

Mr. CHAGNON. On the lines of a single railroad, assuming that their connections were still available to them, it would be, in my opinion, feasible to do. If we were able to marshal our cargo in batteries or groups, that would make it possible for the railroad to handle them.

Mr. HARVEY. In this last strike did you make any such request of the railroads or of the unions?

Mr. CHAGNON. No.

Mr. HARVEY. Have you ever made such a request of the railroads or unions in past strikes?

Mr. CHAGNON. We have asked management to use supervisory personnel to deliver our cargo at least to the terminus of their lines so that it could be picked up, either delivered or picked up by unstruck lines.

Mr. HARVEY. Thank you very much.

Mr. JARMAN. Mr. Kuykendall.

Mr. KUYKENDALL. It is good to have you with us, sir.

Mr. CHAGNON. Thank you.

Mr. KUYKENDALL. I am going to go to the other end and start working back the other way from Mr. Harvey's line of questioning.

Could you give us an estimate, using all other modes of trucks and water and possibly even air, utilizing them to the fullest extent, of a total cross section million-ton shipment over a period of a couple of weeks, let's say, what percent of that could you manage to ship with a total national rail shutdown?

Mr. CHAGNON. This would be nationwide?

Mr. KUYKENDALL. A nationwide rail strike. I am going to the far extreme and let's try to work backward from there.

I am interested in the line of questioning of Mr. Harvey. I know there is no way you can give us a figure in the middle there so let's go to the other extreme and see if we can get some testimony that will help the committee.

Mr. CHAGNON. About 34 percent of our cargo goes by rail. About 27 percent goes by motor carrier.

Mr. KUYKENDALL. We are talking about the continental United States?

Mr. CHAGNON. Yes, only domestic transportation.

Mr. KUYKENDALL. So you have 61 percent there. What does the other 39 percent go by?

Mr. CHAGNON. Nine percent goes by water carrier, barges and so forth, and about 2 percent by air.

Mr. KUYKENDALL. All right.

Mr. CHAGNON. And the remainder by mixed methods such as pipeline or freight forwarders or express.

Mr. KUYKENDALL. Wait a minute. Freight forwarders and express. All of that is either truck or rail. So I was wondering what you were going to do, ship it by camelback, because you had water, land and air, and it came to 72 percent.

Mr. CHAGNON. The majority of that would be by pipeline.

Mr. KUYKENDALL. Okay. But that is your liquids only, is that right, or gas?

Mr. CHAGNON. Yes. In considering that all of the railroads would be shut down, then the remaining major mode, the residual capacity would be mainly motor carriers.

Mr. KUYKENDALL. If you will, just a moment, use your arithmetic, or I will try to use mine right quick, 34 is what percent of 72? It is about half, a little less than half. So approximately one-half your solids——

Mr. CHAGNON. Yes, sir.

Mr. KUYKENDALL (continuing). Is shipped by rail.

Mr. CHAGNON. Yes, sir; that is right.

Mr. KUYKENDALL. Okay. Now, what percent of that could you manage to ship, how much of that half could you manage to ship with a national rail strike?

Mr. CHAGNON. Our estimate has been that the residual capability would be able to take probably less than 10 percent.

Mr. KUYKENDALL. Ten percent of the total or 10 percent of the half?

Mr. CHAGNON. Ten percent of the total rail traffic.

Mr. KUYKENDALL. Ten percent of the total is all you could take. You would lose something like 30 percent of your total solid tonnage?

Mr. CHAGNON. Yes, sir.

Mr. KUYKENDALL. On stateside?

Mr. CHAGNON. That is correct.

Mr. KUYKENDALL. Now, you spoke of the situations, for instance, from your Anniston plant to the east coast. Is that being a monopoly situation? I don't like to use the term, but that is what it is.

All right, now, of that tonnage that goes from Anniston to the east coast, on the factor of 100, what percent of that is shipped by rail?

Mr. CHAGNON. We could divert to motor carriers.

Mr. KUYKENDALL. Forget that. How much motor carrier do you use out of Anniston to the east coast—a ball park guess?

Mr. CHAGNON. I would guess probably, since Anniston is a heavy ordnance type shipper, the majority of it would be by railroad.

Mr. KUYKENDALL. The heavier the ordnance the more rail?

Mr. CHAGNON. Yes.

Mr. KUYKENDALL. Now, in your testimony you single out the bills H.R. 3595 and H.R. 3596 to give your support to, and you state flatly that you think the legislation should cover all modes.

Now, I don't in any way expect you to either be knowledgeable of or get knowledgeable of jurisdictional matters in the Congress—I am sure you have all you can say grace over without worrying about jurisdictional matters in the Congress, so let's get down to cases here.

I believe you singled out rails in your testimony as being the one mode with which partial operation was most difficult?

Mr. CHAGNON. That is correct.

Mr. KUYKENDALL. Simply because you generally have one rail carrier, or possibly two, going into your area, so partial operation for rail would be much more difficult than single truck lines, and so forth?

Mr. CHAGNON. Because it is difficult to isolate our part of the traffic, as opposed to the total rail traffic, whereas with a truck it is feasible, it is feasible with a ship, is feasible with a dock, it is feasible——

Mr. KUYKENDALL. I do not know how familiar with H.R. 9088 and H.R. 8385, which are the various Harvey bills—have you not in your testimony indicated why it was more important to have legislation covering rails than it was the other modes?

Mr. CHAGNON. Well, I would have to agree, yes, sir.

Mr. KUYKENDALL. All right, now, are you familiar at all with the fact that in the bills H.R. 8385 and H.R. 3596 there is a provision there that if the administration, the Secretary, or whoever makes the decision, the President finally, of course, that if he guesses wrong on one of his methods of handling the strike, that the strike will be back in the hands of the committee again?

Were you aware of that?

Mr. CHAGNON. No, sir; I was really—I would really yield to other people more familiar with the legislation than I.

Mr. KUYKENDALL. So what you are primarily interested in is legislation, you are not interested in the number?

Mr. CHAGNON. No, sir. The primary interest of the Department of Defense is as a major shipper, a major user of transportation service, and we are interested in having that available to us so that we can perform our mission.

Mr. KUYKENDALL. So you are not wed to any particular bill or particular number; is this correct?

Mr. CHAGNON. No, sir. The report from the Department of Defense favored that bill as——

Mr. KUYKENDALL. As long as you get your shipments, you really don't care, do you?

Mr. CHAGNON. No, sir.

Mr. KUYKENDALL. Thank you.

Mr. JARMAN. Thank you very much for your testimony.

Mr. CHAGNON. Thank you, sir.

Mr. JARMAN. Our next witness this morning is Mr. Bagge, president of the National Coal Association.

STATEMENT OF CARL E. BAGGE, PRESIDENT, NATIONAL COAL ASSOCIATION

Mr. BAGGE. My name is Carl E. Bagge. I am president of the National Coal Association which represents most of the major commercial bituminous coal producers and coal sales companies in the Nation.

I appear here today to urge immediate action on permanent legislation that will avoid further interruptions in the rail movement of coal and other commodities which are of overriding importance to the Nation.

We applaud the recent rail strike settlement. However, that does not obviate the need for some method of avoiding these recurring problems. Now is the time to secure a permanent solution, one that is arrived at in a calm and objective atmosphere.

Periodic railroad strikes such as those we have just witnessed interrupt coal production, put thousands of men out of work, and threaten our economy which relies heavily on coal for a major part of its energy requirements. Our electric utilities, for example, depend on coal for half the fuel they need to generate electricity. A prolonged strike could lead to brownouts in many areas and ultimately to blackouts.

The Nation's railroads haul more coal, and derive more revenue from moving it, than from any other commodity.

Two-thirds of all the bituminous coal produced in the United States leaves the mine by railroad. In 1970, class I railroads originated 399 million of the 596.5 million tons of bituminous coal produced. The carriers received $1.4 billion for moving coal, or 12 percent of their total freight revenue in 1970.

As of July 30, railroads which originated more than 100 million tons of bituminous coal last year were strikebound. Hundreds of mines were shut down, most of them in the Applachian area, and thousands of families had their source of income cut off. Approximately 25,500 miners were idle during the recent rail strikes.

The strike of the Norfolk & Western Railway alone, the largest coal originating road in the country, put over 20,000 miners out of work in six States. There were 224 coal mines closed down on the N. & W. lines. More than 30 mines on the Southern Railroad's lines also were shut down because the idle coal cars as well as storage facilities were full.

There is no accurate way to determine at this time precisely how much coal production was lost due to the rail strikes which began July 16. However, we estimate this loss of coal output at 1 to 2 million tons.

Railroad strikes also seriously affect U.S. coal exports which in 1970 contributed more than a billion dollars to the Nation's balance of

trade. The value of coal exports represented about 2.5 percent of the total Nation's export value of $42.7 billion (excluding shipments for defense), and nearly 40 percent of the Nation's trade surplus of $2.7 billion in 1970.

The Norfolk & Western Railway handles approximately 50 percent of total U.S. bituminous coal exports. Coal loaded at Tidewater by the N. & W. for export overseas and at the Great Lakes for shipment to Canada originates in Appalachia.

As of Monday of this week, there were 16 vessels at Norfolk & Western's Lamberts Point piers at Hampton Roads, Va., which could not be loaded with coal for export overseas because of railroad strikes. Eight additional vessels will be arriving in the next few days.

My interest in this issue is not based solely upon the position of the National Coal Association and the interests of the coal producing industry. It also reflects a personal view which evolved during my 6 years as a regulator of the Nation's electric and gas utility industries while serving as a member of the Federal Power Commission.

During my period of service on the Commission, even localized rail strikes affecting a single carrier seriously disrupted critical coal movements to electric utility generating plants. This required the Federal Power Commission to request Presidential intervention in rail labor disputes by invoking Emergency Board procedures under the provisions of the Railway Labor Act. Fortunately, in each such instance Presidential Emergency Board procedures had not yet been exhausted and their invocation for the requisite period of investigation and reporting afforded sufficient time for stockpiling coal reserves at the affected utility generating plants. Had the Presidential Emergency Board procedures of the Railway Labor Act already been exhausted, there would have been no remedy and the utilities' fuel supplies at the affected generating plants would have been completely exhausted. Furthermore, since transmission capacity from adjacent electric utilities was inadequate to handle the volume of bulk power required, the impact upon the health and welfare of the public would have been nothing less than disastrous.

This illustrates that there exists a dimension to the problem of the reliability of utility service which is, it seems to me, wholly ignored in the current national discussion of the issue. Ever since the northeast blackout in November 1965, there have been numerous proposals introduced in the Congress which are intended to enhance the reliability of the Nation's utility industry and to protect the public from the possibility of further blackouts or brownouts. My former colleagues and I have appeared before another subcommittee of this committee on numerous occasions during the past several years in a discussion of the reliability of utility service for the Nation. In none of these discussions, nor in any legislative proposal which received the attention of the Congress in connection with this issue, has consideration been given to this vital dimension of the problem of utility reliabilty.

I believe that the goal of achieving permanent and equitable resolution of railroad disputes which is involved in the various proposals before this subcommittee could provide a major contribution to securing more reliable utility service for the Nation. The cessation of essential utility services such as gas and electric power in a single region can today have as disruptive an influence upon the Nation's economy and the health and welfare of the American public as a national rail

strike. The standard for decisively resolving these disputes must now therefore be something other than national chaos and total disruption of our national economy.

Our society today is too complex and our economy is simply too interdependent to permit industrial disputes to cripple our economy and to threaten the health and welfare of the American public. The public interest today demands that we forge new mechanisms to deal with industrial disputes which reflect the reality of that complex and interdependent society. Existing transportation labor legislation spawned in the decades of the twenties is wholly inadequate to deal with these present realities which have evolved in the past 50 years since these mechanisms were established.

Nothing less than the economic security of the Nation and the health and welfare of the public is involved in this issue. I therefore both personally and on behalf of the association which I represent endorse any legislative action which in Congress' determination, will provide for the swift and rational settlement of railroad disputes.

Mr. Chairman, I have attached to my statement a statistical compilation which shows the coal originated in 1970 by all class I railroads. I am also attaching schedules showing the railroads which serve bituminous coal mines along with the States in which they operate.

Thank you for the opportunity to appear before you today.

(The attachments to Mr. Bagge's statement follow:)

BITUMINOUS COAL HANDLED BY CLASS I RAILROADS AND REVENUE RECEIVED DURING 1970

[In net tons]

Railroad	Originated and terminated on line	Delivered to connections	Total originated	Total carried [1]	Revenue received
EASTERN DISTRICT (INCLUDES POC. REGION)					
Akron, Canton & Youngstown				208,108	$180,510
Ann Arbor				2,343,098	1,425,608
Baltimore & Ohio	11,165,934	24,860,554	36,026,488	48,084,331	109,715,633
Bangor & Aroostook	25		25	11,510	27,013
Bessemer & Lake Erie	186,883	4,760,804	4,947,687	10,558,311	17,059,344
Boston & Maine				1,372,750	2,166,073
Canadian Pacific (lines in Maine)				2,216	2,243
Central Railroad of New Jersey	7,116	61	7,177	3,736,601	2,530,886
Central Vermont				127,320	195,635
Chesapeake & Ohio	25,336,723	33,925,442	59,262,165	73,299,008	214,040,554
Chicago & Eastern Illinois	2,127,689	434,899	2,562,588	2,968,578	5,087,255
Chicago & Illinois Midland	2,554,368	390,441	2,944,809	4,309,967	4,269,351
Delaware & Hudson				1,461,300	2,744,894
Detroit & Toledo Shore Line				1,751,531	1,181,828
Detroit, Toledo & Ironton		360	360	2,538,750	2,251,179
Elgin, Joliet & Eastern		195	195	9,743,563	8,612,241
Erie-Lackawanna	1,002	319,888	320,890	5,359,608	10,627,186
Grand Trunk Western	1,267	77	1,344	1,550,562	1,833,467
Illinois Terminal		66,492	66,492	1,800,745	624,565
Lehigh Valley	112	3,268	3,380	1,932,567	2,410,077
Long Island				125,041	215,297
Maine Central				59,648	107,553
Missouri-Illinois	1,415,256	519,719	1,934,975	2,325,418	1,546,802
Monon	135,474	128,599	264,073	1,341,393	2,502,727
Monongahela		6,755,422	6,755,422	6,756,566	4,861,370
Norfolk & Western	48,658,955	30,721,486	79,380,441	90,308,628	293,524,589
Penn Central	29,875,757	15,893,517	45,769,274	93,263,031	222,546,656
Pennsylvania-Reading Seashore Lines		116	116	1,188,660	1,428,918
Pittsburgh & Lake Erie	2,217,886	888,785	3,106,671	7,327,617	9,163,697
Reading	443		443	14,787,642	20,297,274
Richmond, Fredericksburg & Potomac	48	67	115	586,144	799,718
Western Maryland	1,866,775	4,860,422	6,727,197	15,539,962	18,110,670
Total eastern district	125,551,713	124,530,614	250,082,327	406,770,074	962,091,313

BITUMINDUS COAL HANDLED BY CLASS I RAILROADS AND REVENUE RECEIVEO OURING 1970—Continued

[In net tons]

Railroad	Originated and terminated on line	Delivered to connections	Total originated	Total carried [1]	Revenue received
SOUTHERN DISTRICT					
Alabama Great Southern	284,619	4,475	289,094	1,770,934	2,533,706
Central of Georgia	108	141	249	3,765,911	4,557,941
Cincinnati, New Orleans & Texas Pacific	128,411	367,043	495,454	2,685,968	2,890,377
Clinchfield	2,738,162	4,224,666	6,962,828	14,937,435	20,167,398
Florida East Coast		69	69	69	445
Georgia		40	40	1,779,774	2,795,656
Georgia Southern & Florida		2,766	2,766	96,754	118,428
Gulf, Mobile & Ohio	3,079,676	2,832,398	5,912,074	6,257,123	7,633,678
Illinois Central	15,496,281	10,112,094	25,608,375	26,503,364	47,503,742
Louisville & Nashville	19,165,750	28,980,523	48,146,273	50,076,293	96,635,061
Norfolk Southern	77		77	556,384	1,054,514
Savannah & Atlanta	131		131	119,326	162,093
Seaboard Coast Line	3,531	144	3,675	17,823,957	26,805,551
Southern	9,735,325	3,232,797	12,968,122	28,816,431	50,978,415
Total southern district	50,632,071	49,757,156	100,389,227	155,189,723	263,837,005
WESTERN DISTRICT					
Atchison, Topeka & Santa Fe	1,253,664	233,706	1,487,370	4,455,772	9,303,018
Burlington Northern	14,455,952	4,278,399	18,734,351	21,258,071	42,086,472
Chicago & North Western	2,217,022	126,831	2,343,853	8,112,572	16,903,990
Chicago, Milwaukee, St. Paul & Pacific	3,138,626	571,663	3,710,298	6,164,302	10,403,930
Chicago, Rock Island & Pacific	742,700	1,079,064	1,821,764	2,629,270	4,155,865
Colorado & Southern				361,307	456,674
Denver & Rio Grande Western	4,536,852	2,802,119	7,338,971	8,698,423	13,182,468
Duluth, Missabe & Iron Range	626,774	78,888	705,662	948,581	951,296
Duluth, Winnipeg & Pacific		3,802	3,802	74,239	148,411
Fort Worth & Denver				11,813	28,684
Green Bay & Western				171,291	176,915
Kansas City Southern	217,065	195,398	412,463	887,543	2,119,845
Lake Superior & Ishpeming				601,453	510,749
Missouri-Kansas-Texas	819,428	844,174	1,663,602	1,705,562	1,943,662
Missouri Pacific	2,860,506	891,122	3,751,628	4,654,042	6,038,710
Northwestern Pacific				248	680
St. Louis-San Francisco	680,229	2,047,291	2,727,520	2,778,879	3,902,572
St. Louis Southwestern	873	510	1,383	2,207	18,993
Soo Line	125,743	303,494	429,237	959,122	1,692,264
Southern Pacific	1,407	739	2,146	274,432	965,215
Texas & Pacific (includes Kansas, Oklahoma & Gulf)	486	191,562	192,048	262,889	346,461
Toledo, Peoria & Western	634,707	1,117	635,824	1,560,091	933,269
Union Pacific	1,394,968	1,001,731	2,396,699	6,015,767	19,322,835
Western Pacific				186,658	429,157
Total western district	33,707,002	14,651,610	48,358,612	72,774,534	136,022,135
Total United States	209,890,786	188,939,380	398,830,166	634,734,331	1,361,950,453

[1] Includes duplications.

RAILROADS SERVING BITUMINOUS COAL MINES IN THE UNITED STATES

Algers, Winslow & Western: Indiana.
Atchinson, Topeka & Santa Fe:
Colorado.
Illinois.
New Mexico.
Baltimore & Ohio:
Illinois.
Ohio.
Pennsylvania.
West virginia.
Bessemer & Lake Erie: Pennsylvania.
Bevier & Southern: Missouri.
Burlington Northern:
Illinois.
Iowa.
Missouri.
Montana.
North Dakota.
Washington.
Wyoming.
Cambria & Indiana: Pennsylvania.
Carbon County: Utah.
Carolina, Clinchfield & Ohio:
Kentucky.
Virginia.
Chesapeake & Ohio:
Kentucky.
Ohio.
West Virginia.
Chesvick & Harmar: Pennsylvania.
Chicago & Eastern Illinois:
Illinois.
Indiana.
Chicago & Illinois Midland: Illinois.
Chicago, Milwaukee, St. Paul & Pacific:
Indiana.
Montana.
North Dakota.
Chicago & North Western:
Illinois.
Iowa.
Chicago, Rock Island & Pacific:
Illinois.
Iowa.
Colorado & Southern: Colorado.
Colorado & Wyoming: Colorado.
Denver & Rio Grande Western:
Colorado.
Utah.
Detroit, Toledo & Ironton: Ohio.
Erie Lackawanna: Ohio.
Gulf, Mobile & Ohio: Illinois.
Illinois Central:
Illinois.
Kentucky.
Illinois Terminal: Illinois.
Interstate: Virginia.
Kanawha Central: West Virginia.
Kansas City Southern: Oklahoma.
Kentucky & Tennessee: Kentucky.
Lake Erie, Franklin & Clarion: Pennsylvania.
Louisville & Nashville:
Alabama.
Kentucky.
Tennessee.
Virginia.
Mary Lee: Alabama.
Missouri-Illinois: Illinois.
Missouri-Kansas-Texas:
Kansas.
Missouri.
Oklahoma.
Missouri Pacific:
Arkansas.
Illinois.
Missouri.
Oklahoma.
Monon: Indiana.
Monongahela: West Virginia.
Montour: Pennsylvania.
Norfolk & Western:
Illinois.
Iowa.
Kentucky.
Missouri.
Ohio.
Virginia.
West Virginia.
Penn Central:
Illinois.
Indiana.
Ohio.
Pennsylvania.
West Virginia.
Pittsburgh & Lake Erie: Pennsylvania.
Pittsburg & Shawmut: Pennsylvania.
St. Louis-San Francisco:
Alabama.
Arkansas.
Kansas.
Oklahoma.
Soo Line: North Dakota.
Southern:
Alabama.
Indiana.
Kentucky.
Tennessee.
Virginia.
Tennessee: Tennessee.
Toledo, Peoria & Western: Illinois.
Union Pacific:
Colorado.
Wyoming.
Unity: Pennsylvania.
Utah: Utah.
Western Maryland:
Maryland.
Pennsylvania.
West Virginia.
Woodward Iron Co.: Alabama.
Youngstown & Southern:
Ohio.
Pennsylvania.

Railroads serving bituminous coal mines in the United States

State and railroad:	*Coal district*
Alabama: Louisville & Nashville; Mary Lee; St. Louis-San Francisco; Southern; and Woodward Iron Co.	13, 18.
Arkansas: Missouri Pacific and St. Louis-San Francisco	14.
Colorado: Atchison, Topeka & Santa Fe; Colorado & Southern; Colorado & Wyoming; Denver & Rio Grande Western; and Union Pacific.	16, 17.
Illinois: Atchison, Topeka & Santa Fe; Baltimore & Ohio; Burlington Northern; Chicago & Eastern Illinois; Chicago & Illinois Midland; Chicago & North Western; Chicago, Rock Island & Pacific; Gulf, Mobile & Ohio; Illinois Central; Illinois Terminal; Missouri Illinois; Missouri Pacific; Norfolk & Western; Penn Central; and Toledo, Peoria & Western.	10.
Indiana: Algers, Winslow & Western; Chicago & Eastern Illinois; Chicago, Milwaukee, St. Paul & Pacific; Monon; Penn Central; and Southern.	11.
Iowa: Burlington Northern; Chicago & North Western; Chicago, Rock Island & Pacific; and Norfolk & Western.	12.
Kansas: Missouri-Kansas-Texas and St. Louis-San Francisco.	15.
Kentucky: Carolina, Clinchfield & Ohio; Chesapeake & Ohio; Illinois Central; Kentucky & Tennessee; Louisville & Nashville; Norfolk & Western; and Southern	8, 9.
Maryland: Western Maryland	1.
Missouri: Bevier & Southern; Burlington Northern; Missouri-Kansas-Texas; Missouri Pacific; and Norfolk & Western.	15.
Montana (bituminous and lignite): Burlington Northern and Chicago, Milwaukee, St. Paul & Pacific.	22.
New Mexico: Atchinson, Topeka & Santa Fe	17, 18.
North Dakota (lignite): Chicago, Milwaukee, St. Paul & Pacific; Burlington Northern; and Soo Line.	21.
Ohio: Baltimore & Ohio; Chesapeake & Ohio; Detroit, Toledo & Ironton; Erie Lackwanna; Norfolk & Western; Penn Central; Youngstown & Southern.	4.
Oklahoma: Kansas City Southern; Missouri-Kansas-Texas; Missouri Pacific; and St. Louis-San Francisco.	14, 15.
Pennsylvania: Baltimore & Ohio; Bessemer & Lake Erie; Cambria & Indiana; Cheswick & Harmar; Lake Erie, Franklin & Clarion; Montour; Penn Central; Pittsburgh & Lake Erie; Pittsburgh & Shawmut; Unity; Western Maryland; and Youngstown & Southern.	1, 2.
Tennessee: Louisville & Nashville; Southern; and Tennessee.	8, 13.
Utah: Carbon County; Denver & Rio Grande Western; and Utah.	20.
Virginia: Carolina, Clinchfield & Ohio; Interstate; Louisville & Nashville; Norfolk & Western; and Southern.	7, 8.
Washington: Burlington Northern	23.
West Virginia: Baltimore & Ohio; Chesapeake & Ohio; Kanawah Central; Monongahela; Norfolk & Western; Penn Central; and Western Maryland.	1, 3, 6, 7, 8.
Wyoming: Burlington Northern and Union Pacific	19.

Mr. JARMAN. Mr. Bagge, are you recommending—is your association recommending any particular legislative approach in this matter?

As you know, there are several bills that have been introduced with varying approaches to the problem.

Mr. BAGGE. Mr. Chairman, our association simply endorses the principle underlying many of these various bills which would provide mechanisms beyond the existing procedures of the Railway Labor Act which provide only for a Presidential Emergency Board.

We believe that a new mechanism is required to treat with and deal with these labor disputes in a manner compatible with what we say today is too interdependent and too complex a society to tolerate a cessation of railroad service for the Nation.

We say this is true not only in terms of a national strike but also a strike against a single carrier, because of the disruptive influence it could have on coal production and ultimately upon industry generally.

Mr. JARMAN. Mr. Adams.

Mr. ADAMS. Thank you.

Mr. Bagge, you indicate that a single carrier being struck can have this disastrous effect. Is it your position that there is no alternative rail service into the coal-producing industry portion of the country by which coal can be moved?

Mr. BAGGE. The fact is the mines were down in this last strike, Congressman. There is no effective alternative means because most of the coal production of the Nation is geared to transportation by railroad.

Mr. ADAMS. I am aware of that. But are you saying to me there is no competitive situation in the rail industry, that you have in effect a monopoly, so if one line goes down, that effectively shuts off coal movement from a substantial portion of the country?

Mr. BAGGE. That is correct.

Mr. ADAMS. Well, then if we have a monopoly type of situation, which is what you indicate there, following on the chairman's question, it has been suggested in the administration bill that we have a partial operation of certain lines in order to prevent a national emergency.

Would you feel that a partial operation of certain coal carrying lines would be required in order to keep the country from having a national emergency?

Mr. BAGGE. At a minimum I think this would be required, in terms of the coal industry.

Mr. ADAMS. Now, I discussed this with the Secretary of Transportation and pointed out if the selective strikes should happen to spread, you would be in a situation where the Government would be in effect operating a portion of the Nation's rail capacity, and he indicated that probably would be true.

What do you think about the proposal that if we are going to do that we might as well seize it, if we are going to prevent the men from being paid or from striking, that we should prevent there being corporate profits or the payment of corporate salaries during that period of partial operation, and in effect have the Government run it?

Mr. BAGGE. Well, as I understand the administration's proposal, this is one of the options available to the President—this is one of the three options.

Mr. ADAMS. We have had lengthy discussion with the witnesses that have come up and I think Mr. Harvey has made the point—I won't prejudge his questioning—but that the President's three options seem to come down really to one option—he has to select one and he has either offer in selection, which is in effect solving the matter for them, or partial operation, being distinct alternatives. not in seriatim, and the third one is a 30-day additional cooling-off period.

What I am really asking you in terms of your business, do we need differing or more alternatives in order to prevent the disastrous effect that you outline in your statement?

Mr. BAGGE. It would seem to me, without professing to be totally familiar with all of the nuances involved in all of the bills, that the more options that were available to the President to deal with the situation as he found it, it seems to me this would provide the most desirable course.

Mr. ADAMS. You indicated that the Emergency Board procedures has enabled you in the past to stockpile at utilities in order to prevent a blackout. So, I gather that you feel that within the statute there should be some warning before either a strike, or the exhaustion of procedures. In other words, an Emergency Board procedure so that you could stockpile?

Mr. BAGGE. Well, I hadn't given much thought to that specific aspect of it, Congressman. The fact is, that we were fortunate—that is, in my reference to the Federal Power Commission—we were fortunate in the situations which we had before us, because the Presidential Emergency Board provisions had not been exhausted. But had they been exhausted, we would have been totally helpless in seeking any kind of relief because the statute does not now provide for any relief following the exhaustion of the Presidential Emergency Board procedures.

So that what I am really petitioning the Congress for, in behalf of the Nation's coal producers, is to add such procedures and devices beyond the Presidential Emergency Board, which would foreclose the possibility of a complete shutdown.

Mr. ADAMS. Well, what I am asking you is: If we wipe out the statute and replace it with something else, which may well happen, do you feel there should be some type of either Emergency Board procedure or other procedure that would give you a period of time to protect youself against possible blackouts?

Mr. BAGGE. I think that would be quite helpful.

Mr. ADAMS. All right. I want to have it very clear, again, you feel that even with the selective strike, that in the coal-carrying capacity of the Nation, there are not alternative modes so that a strike on a single carrier can produce what you describe as disastrous effects?

Mr. BAGGE. And it did so, Congressman, only in the past few weeks.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Harvey.

Mr. HARVEY. We welcome you, Mr. Bagge.

I had the pleasure of serving on the Communications and Power Subcommittee in the past few years when you formally appeared before that committee on the electric power reliability bills. We welcome you here to this subcommittee.

Mr. BAGGE. Thank you very much.

Mr. HARVEY. I take it from what you have told Mr. Adams that you have no basic objection to selective strikes in the railroad industry as long as some provision is made for the hauling of essential materials such as coal to electric plants in that area. Would that be correct?

Mr. BAGGE. Well, let me say, if I could address myself again to that question, that the association which I represent is not taking a position with respect to any one of the several bills. We would leave it to the judgment of Congress to select which of the techniques should be arrived at. We are really pleading for a methodology that would permit the continued movement of coal as an essential national commodity, pending the resolution of any dispute.

Mr. HARVEY. I take it then that the shipments of coal that were interrupted were shipments that were going not only to electric plants, but they were going to many other destinations, as well; is that correct?

Mr. BAGGE. That is correct.

Mr. HARVEY. So that the selective strike undoubtedly would have hurt, and without question affected very greatly the coal industry, regardless of whether the destination was electric plants or whether the destination was elsewhere; is that correct?

Mr. BAGGE. That is correct.

Mr. HARVEY. But in the one instance that you cite, the case of coal going to electric plants throughout the country, as it affects our power reliability, in this case we are talking about a very essential movement of material as far as the Nation's health and safety is concerned?

Mr. BAGGE. There is no question about that.

Mr. HARVEY. Now, is it feasible, under those circumstances, where a railroad has been struck by a union, in a selective strike, to move that one material?

Mr. BAGGE. I don't see how that would work.

I am no labor relations expert, Congressman, but I do know that when there was a strike—the one instance I referred to when I served on the Federal Power Commission—against the Belt Railway of Chicago which serves a terminal switching function, the entire city of Milwaukee, Wis., would have gone down. There wasn't adequate transmission capacity to introduce through adjacent utilities the kind of massive bulk power that was required to keep the city of Milwaukee with sufficient power to see it through the winter. Here was a strike by a small switching carrier in Chicago which effectively would have shut down the power supply to all of the residents of the city of Milwaukee but for the fact we persuaded the White House to intercede and to establish a Presidential Emergency Board, which then permitted, during the period of investigation and reporting, continued rail movements before the winter freeze on the Great Lakes and permitted the adequate stockpiling of coal so that the citizens of Milwaukee would have enough electric power to see them through that winter.

This is a single carrier, and from the national point of view, not a very critical carrier, other than the fact that it so happened that the strike on the Belt Railway of Chicago effectively foreclosed any means of getting coal into the generating plants of the Wisconsin Power and Light Co.

Mr. HARVEY. Well, in that case, however, if the union had agreed to work the railroads, and management had agreed, that particular shipment could have gone through?

Mr. BAGGE. I suppose that is true. I am just not technically competent to know whether that kind of operation could work effectively during a strike.

Mr. HARVEY. Well, I know my friend from Tennessee has some questions with regard to alternative modes of transportation, and so forth, so I will yield my time back.

Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Kuykendall.

Mr. Metcalfe.

Mr. METCALFE. Thank you, Mr. Chairman.

Mr. Bagge, what is a brownout? I know you refer to a brownout and ultimately a blackout.

Mr. Bagge. A brownout is generally regarded as a situation in which the reserves of power are insufficient to meet the peak demand at any given time and there has to be something called selective load shedding employed by the utilities. Consolidated Edison of New York, for example, has periodically during the past few summers and, here in the Washington area, and in the Middle Atlantic States, the utilities have had to selectively cut load to prevent a cascading power failure. We generally refer to that as a brownout in that the market area is not provided with sufficient generating capacity to meet the peak level of demand.

Mr. Metcalfe. You are, of course, familiar with all of the procedures and the options that are open, and when there is a strike there is a time factor; that is, the time that elapses between the beginning of the negotiations and the settlement. In addition to that the President has these three options as proposed.

Now, we are going to be called upon to consider what you have requested, and that is permanent legislation, but in listening to you and following your testimony, you painted a very dismal picture as to the effects of any strike.

I note one thing that was missing, and I will use your example of Milwaukee, a city I am very familiar with, with the strike being down and the disastrous effects that it would have.

My question is: Could you give us some idea as to the time factor before this dismal picture, these disastrous effects would happen? I did not pick that up at all in your testimony. I think you gave us an ultimate situation.

Being realistic, I know you know we can't settle a strike in 1 or 2 days.

Mr. Bagge. Well, in the instance that I cited in Milwaukee, we had an illustration of the criticality of the element of time. There was somethink like a period of 2 weeks before the winter freeze on Lake Michigan would have absolutely prevented any further movement. There was no railroad movement into this multigenerating unit of the Wisconsin Power & Light by water, and there was a 2-week period of time in which we could move coal from central and southern Illinois into that area.

So that in that situation time was of the essence. A day, 24 hours, or a 48-hour period would have been critical because it would have meant that you couldn't get the unit train shipments into the generating plant in sufficient time.

So it seems to be, therefore, that it is hard to generalize about how critical time is and that is why I think the President, having available to him several options, would provide him with the kind of freedom that it would take to meet each specific situation as it arose.

In the Milwaukee situation we simply had to end that strike immediately because there was only a 2-week period in which to bring the coal into the area.

Mr. Kuykendall. Would the gentleman yield?

Mr. Metcalfe. Yes.

Mr. Kuykendall. Would not this be a very appropriate point in line with Mr. Metcalfe's questioning, to discuss the stockpile capability,

economic and physical, and how that would vary according to seasons of the year? But doesn't your stockpile capability have an awful lot to do with this?

Mr. BAGGE. Well, of course, that is right. For example, let's take my industry. As we went into this last fall a year ago, the stockpiles of coal were at their lowest point in many, many years and——

Mr. KUYKENDALL. How many days or weeks can you stockpile? We don't have any idea, do we?

Mr. BAGGE. That is a variable. It depends on what your facilities—your loading facility——

Mr. KUYKENDALL. Give us an example. We don't know whether you are talking about days or months.

Mr. BAGGE. Right now, generally for example, we say that today the utilities, at least we believe that today, the utilities were very fortunate during the last rail strike simply because we had a 7 percent national increase in production of coal the first 7 months of this year. So that today we generally say that the utilities have about a 60- to 90-day stockpile of coal, generally speaking, throughout the Nation.

However, to illustrate how difficult it is to generalize, I, for example, received a telephone call from a utility manager in Indianapolis, Ind. He called me on the telephone last Friday afternoon and said that his utility was faced with a 30-day stockpile of coal for that utility and the coal that they were getting was a particular type of coal from N. & W. which had been hit. He was calling me to find out if we at National Coal could afford some other source of coal for that particular utility. That is the only call I received. But the fact was that even though we say generally there is a 60- to 90-day coal stockpile, here was the manager of a municipal utility who called me personally, seeking help because he has only 30 days' supply, and he had no source of additional coal movement at that time.

So that the only way I can intelligently answer the question, Congressman, is to say it is very difficult to generalize about any time frame within which we can meet a situation in this area.

In the Milwaukee instance we had to get the coal moving immediately because we would be cut out by reason of the freezing of the lakes in 2 weeks. Today, although we say we have a 90-day stockpile generally, here was the utility in Indianapolis that had 30 days and they were getting uptight at that point.

Mr. METCALFE. Are you through?

Mr. KUYKENDALL. Yes.

Mr. METCALFE. Are you suggesting, then, that whenever there is a strike that it be known how long one can hold out? We are talking about a stockpile of coal in this particular instance because I am going to be called upon to make some determination as to whether or not there should be a 60- or 90-day cooling-off period and I don't think we can treat it lightly and just say 60 or 90 days. I think it is very germane what the strike situation is, and this may enable us to do the job that we think is necessary, or to come up with the legislation because time is a very important factor here and that was the reason I posed these questions to you.

Mr. BAGGE. Yes, sir. I don't treat that question lightly and I think it is critical. When I say 60 to 90 days, I don't mean to brush off the importance of this decision by the Congress, but simply to illustrate

that in the coal industry we are thinking now in terms of 60 to 90 days' reserves of coal. But that simply doesn't always hold true. Here we have one situation where it was only 30 days.

Mr. METCALFE. Thank you very much. I have no further questions.

Mr. JARMAN. Mr. Kuykendall?

Mr. KUYKENDALL. To continue basically with the line of questioning for the record, if you have it either exactly or a ball park figure on the tip of your tongue, am I correct in assuming that you have three basic uses for coal—power generation, direct heat, and the chemical industry; is that about it? The chemical industry, direct heat, and power generation?

Mr. BAGGE. Electric power and general industrial use. We also have export coal——

Mr. KUYKENDALL. I am talking about internally.

Mr. BAGGE. Well, a good portion of our Nation's coal production is metallurgical coal which is used in the production of steel.

Mr. KUYKENDALL. I will add a fourth category and say industrial nonheat.

Mr. BAGGE. Yes, sir.

Mr. KUYKENDALL. Use in the steel industry.

Mr. BAGGE. And I might add there is an entirely new use which is emerging when we produce a synthetic fuel industry later in this decade, and that is for the production of gas from coal. Coal will become increasingly important as a supplementary source for the Nation's gas industry.

Mr. KUYKENDALL. But let's talk about right now. In writing legislation, we had better consider the evidence.

Now, could you give us an idea now as to what percent of the coal shipped in the eastern region is used for a combination of power generation and direct heat?

Mr. BAGGE. I would say that most eastern coal is for steam coal use.

Mr. KUYKENDALL. That is power generation?

Mr. BAGGE. For power generation—and I really can't be held to any percentages—I would estimate at approximately 60 percent. A good deal of it is metallurgical and I would estimate about 20 to 25 percent would be high grade metallurgical coking coal used for the steel industry.

Mr. KUYKENDALL. Are you saying, generally speaking, that is 25 percent for the industrial steel industry, more or less; that is, the tonnage for chemical steel and it is relatively low?

Mr. BAGGE. Twenty to 25 percent for industrial steel.

Mr. KUYKENDALL. We are talking about a very small percentage?

Mr. BAGGE. Are we talking about petrochemical feed stock?

Mr. KUYKENDALL. Something like 5 percent?

Mr. BAGGE. Less than that.

Mr. KUYKENDALL. Speaking of somewhere between 65 and 70 percent of your total tonnage is used for direct heat or power generation?

Mr. BAGGE. I would estimate approximately 20 percent for general industrial use and approximately 60 percent for steam.

Mr. KUYKENDALL. Now, how much does your direct consumption vary in your winter months and your summer months, let's say, to compare February with July?

In other words, we are looking here at how much would be affected by a long, cold winter, let's say.

Mr. BAGGE. Well, the interesting thing that has happened in the utility industry is that, historically, we would have a winter peak and that came somewhere about December and January. But what has happened with the air-conditioning load is that the utilities are now experiencing a summer peak as well, and that is when the utilities are experiencing most of their difficulties here on the east coast. I would say that the winter peak of 2 months you mentioned would be the 2 months of the highest consumption of steam.

Mr. KUYKENDALL. Would they be similar?

Mr. BAGGE. I think they would be quite similar because on the one hand you will have a demand by the electric utility industry at the peak in the winter and an even greater demand now in many of the urban areas for air-conditioning loads. So that, in my opinion, there would not be a decline in the consumption of steam coals in the summer vis-a-vis the winter, but rather, increasingly in the past 5 years, it would be approximately the same.

Mr. KUYKENDALL. However, you would think that—correct me if I am wrong here—a true national emergency such as coal would be more likely to appear in the winter than in the summer? We can tolerate these 90-degree days but it is pretty hard to get down to zero and tolerate that.

Mr. BAGGE. You mean in terms of health and welfare? Comfort and environment which is really a luxury in the summer as opposed to people going cold in the winter. In terms of that standard I have to concede that obviously a decline in power production in the winter would have far more serious consequences to the American public.

Mr. KUYKENDALL. On your eastern seaboard, particularly in the winter, stockpiles take quite a few weeks and months probably to build up, do they not?

Mr. BAGGE. That is correct.

Mr. KUYKENDALL. Now, let's see the eastern region as an example further, because I know it is awfully hard to generalize with all three regions because they are so different.

Let's use the eastern region where you probably have a more mixed traffic than you do have anywhere—you have three modes: railroads, barges, and trucklines. Can you give us an estimate as to what percentage of your total coal tonnage is hauled by each of those modes now?

Mr. BAGGE. Well, let me say, Congressman, that in the appendix attached to my statement, I have on the first page an exhibit entitled "Bituminous Coal Handled by Class I Railroads During 1970."

We have broken down the total eastern district which indicates that the total tonnage originated was 250 million.

Mr. KUYKENDALL. That is only railroads?

Mr. BAGGE. That is only rail.

Mr. KUYKENDALL. What percentage of your total is that?

Mr. BAGGE. The eastern region originated approximately 63 percent of the total coal tonnage originated by all class I railroads in the United States in 1970.

Mr. KUYKENDALL. Your barge line comes in with a pretty sizable figure?

Mr. BAGGE. I would certainly think so and that particularly in the East, because this includes Ohio, West Virginia, and the tremendous

movement along the Ohio River. So there would be a large percentage of that, certainly a larger percentage than in the southern district.

Mr. KUYKENDALL. And the western would have very little barges?

Mr. BAGGE. In barge traffic, that is quite correct. I think the largest of barge traffic would be in the eastern district.

Mr. KUYKENDALL. Your smallest percentage of rail traffic as compared to the total would be in your eastern region?

Mr. BAGGE. The eastern region produces more coal than the western region, so it would be only a smaller percentage when compared to another mode. But it would be the highest percentage of total originated coal tonnage because in the eastern region the figures are more than twice that of the southern region and more than five times that of the western region.

Mr. KUYKENDALL. All right, because of heavier population and greater production all in the same region; is that correct?

Mr. BAGGE. That is correct.

Mr. KUYKENDALL. Now, let's go a step further here and discuss something that has been touched on several times already this morning, and that is the idea of partial operation.

Now, the gentleman from Washington, Mr. Adams, brought this up in one way and Mr. Harvey brought it up in another, and I would like to discuss it from another angle.

The purpose of a strike, or for that matter, the threat of a strike, is for the purpose of using economic leverage on both sides to achieve a goal after free collective bargaining has failed.

Now, as you are well aware, and I shall not ask you to pass judgment on either of the bills as compared to another—I think that is the wisest thing you have done at this point, not to get into this Donnybrook, but let's discuss the principle.

Would not the idea of the partial strike, not selective but partial, automatically, particularly since we are speaking of the largest single item of a railroad, if that were put back in business, wouldn't it be a logical assumption that organized labor would automatically oppose that because their biggest single leverage is taken away from them?

Mr. BAGGE. I certainly cannot disagree with that position.

Mr. KUYKENDALL. So when you pick out the greatest plum in the pie and take it away as a reward, then you are severely damaging collective bargaining, as far as a partial operation is concerned.

This is one of the reasons that I simply could not be for partial operation, because there is no way to keep from unbalancing the scales if we started doing that.

This is one of the reasons I want to develop the fact that if you restored coal in the eastern region, restore the total operation of the coal industry with some parts of some railroads, you would almost have put them back in business, wouldn't you?

Mr. BAGGE. Well, of course, that is exactly what I am for, speaking for the coal producers. It is in our economic self-interest to—at least we are pleading——

Mr. KUYKENDALL. By the way, we expect you to speak from your own self-interest.

Mr. BAGGE. From our point of view, any methodology that would permit the continuation of coal movements would be certainly helpful to the coal producers of the Nation. We would urge that whatever

mechanisms are forged here that we do provide for the continued movement of a commodity that we believe is essential to the health and welfare of the Nation.

Mr. KUYKENDALL. So you have developed a point here, and I think done it very well, that not only are you the greatest customer of the railroad, as far as revenue, and hopefully profits, because God knows they need them, but if a partial operation of the coal industry, particularly in the eastern region, were allowed to continue, you would have simply taken the largest single part of the economic pressure off of the strike situation itself.

Mr. BAGGE. I can't disagree with your position.

Mr. KUYKENDALL. And what this really gets down to, and I won't ask you to comment on this, I know you would rather not—what it gets down to in the fact—in two bills here, there was one suggesting only a partial operation, and this is one thing that now for 2 days we have discussed, is the partial operation, and I am very strongly opposed to the idea of partial operation because I think it does two things: It penalizes an industry on a rail line that doesn't happen to be quite so important in tonnage, or it doesn't happen to create quite as much a national emergency as getting cold in the wintertime creates, and it puts, I think, a serious penalty on the working man as far as having to stand up.

We appreciate your frankness here. I think you have shown us a great many reasons why we do need this permanent operation.

Thank you, Mr. Chairman.

Mr. JARMAN. Thank you.

Mr. BAGGE. Thank you.

Mr. JARMAN. Mr. Skubitz.

Mr. SKUBITZ. Thank you, Mr. Chairman.

Mr. Bagge, I appreciate the interest you have in legislation to settle transportation strikes because of the effect it has on the coal industry.

I am wondering whether or not you feel the same way with regard to permanent legislation in order to settle strikes in the coal industry.

Mr. BAGGE. Well, I am really not prepared to comment on that, Congressman. I am only authorized to discuss with the committee the various bills that relate to our concerns with the labor stoppages in the transportation field, particularly the railroad industry, so I am not really prepared to comment.

Mr. SKUBITZ. You have no thoughts on this, at all?

Mr. BAGGE. Well, I am not authorized to speak based upon my relations with my board of directors on that issue.

Mr. SKUBITZ. I think that your board of directors ought to be ready and willing to discuss its position with regard to strikes that affect the coal industry directly. It's always easy to give opinions about the other fellow's problems.

Mr. BAGGE. I can appreciate that, Congressman, but as I say, I am not authorized to deal with that particular aspect of our industry's problems.

Mr. SKUBITZ. Your testimony would be more impressive as far as I am concerned if you talked to the overall strike picture rather than just one segment of it.

Mr. BAGGE. That may be so, but I was addressing myself only to the bills that are before this committee at the present time.

Mr. SKUBITZ. Thank you.

Mr. JARMAN. Mr. Adams.

Mr. ADAMS. The administration bill indicates that selective strikes would be allowed and you could only have an 80-day cooling-off period in the event of a national emergency.

Now, would you favor the present test which is in the Railway Labor Act, which is a substantial disruption of service in any area, as a test for a cooling-off period, or the administration procedure which is to allow the selective strike and only allow an 80-day injunction if there is a national emergency?

Mr. BAGGE. I would strongly urge the provision which does not hinge upon the threshold standard being a national emergency. I would urge that something less than that be provided as the threshold test for invoking any one of these procedures because, I say, based on my personal experience while serving in the Government, that no one could possibly suggest that there was a national emergency when the city of Milwaukee was going down because of a lack of fuels to generate electricity. We have to have a standard which is something less than a national crisis, it seems to me, and I would strongly urge that a test be adopted such as that contemplated, not by the administration bill, but by the present provisions of the Railway Labor Act.

In fact, I might suggest perhaps something even less than that because from my personal experience I know that we had problems at the FPC with trying to justify the invocation of a Presidential Emergency Board in a situation under the standards that exist now in the Railway Labor Act. That is, the test of an impact having regional significance, because we found it hard to justify presidential intervention in this situation under existing statutory criteria. The Milwaukee situation wasn't regional in scope, but affected one city, one group of people. But their health and welfare was a critical concern. We were critically concerned with that, and we really had a tough time justifying that as being regional in scope.

So I would say the threshold standard, Congressman, ought to be something other, perhaps, than either the administration's proposal for national significance or the present statutory language requiring as a threshold question a strike having regional significance, because the point I tried to make is it could have a significant impact on the health and welfare of the public, even though it isn't either regional or national in scope.

Mr. ADAMS. Thank you.

Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Kuykendall.

Mr. KUYKENDALL. Not a question to you, but I think it is something, Mr. Chairman, that would be well if before we adjourn this committee, kind of unofficially go on record of congratulating the representatives of labor, the representatives of management, and the Secretary of Labor for what happened over the weekend.

I think we Members of Congress kind of have a double reason to be grateful for this. In the first place, this is the first time one of these has been settled in this manner in quite some time, and we are also glad to get our recess with a little lower blood pressure than we might have otherwise.

I think it would be unwise for anyone to feel that one robin makes a spring, and that one settlement in any way lessens the need for permanent legislation. But I want to express my gratitude and I know the committee does, for the great work done by these people, under tremendous pressure, over the weekend.

Mr. ADAMS (presiding). Any further questions from any of the members of the committee?

The committee thanks you very much for being here, Mr. Bagge, and the committee will recess until tomorrow morning at 10 o'clock.

(Thereupon, at 11:20 a.m. the hearing adjourned, to reconvene Wednesday, August 4, 1971, at 10 a.m.)

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

WEDNESDAY, AUGUST 4, 1971

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. John Jarman (chairman), presiding.

Mr. JARMAN. The subcommittee will please come to order.

Today, we continue the hearings on legislative proposals relating to the settlement of transportation labor disputes.

Our first witness this morning is our colleague from the State of New York, the Honorable Howard W. Robison.

Welcome to the committee, Mr. Robison. Please come forward and proceed when you are ready, sir.

STATEMENT OF HON. HOWARD W. ROBISON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. ROBISON. Mr. Chairman, I am happy to present this statement in support of H.R. 9088, and I highly commend your action in conducting these hearings on what has again become a dangerously deficient system of railroad-strike mediation. As has happened in the past, I had anticipated a deceptively calm atmosphere for these hearings, one which might lull us into forgetfulness of the crisis atmosphere of our May 18 session, when we were forced, without hearings, and without the benefit of any sort of careful, detailed study to dictate to the railway workers the terms of their settlement. A quick rereading of that night's debate might again remind us of the frustration, our lack of preparation and our own forced necessity to act.

Yet, as we see, it is not necessary to dramatically invoke that session or the similar sessions that have gone before it during the past decade, for we are now in the midst of another crippling strike when fresh vegetables rot, waiting to be delivered, grain piles up in vacant lots, and New York's rail commuters prepare for the possibility of hopelessly snarled traffic, should they be forced to their automobiles.

The Railway Labor Act, which governs the mediation pattern for disagreements leading to such strikes, has clearly failed time and time again. There is no reason for any of us who sit here to believe that we will not be called to emergency session this week, or next, or a dozen more times during the next decade to protect the Nation's health and welfare by dictating a hasty, makeshift strike settlement.

66-871—71—pt. 1——21

Many of the witnesses who have appeared before you, Mr. Chairman, are more qualified than I to explain in detail the deficiencies of the Railway Labor Act. Yet any member of this body can state with certainty that the mediation procedures now in effect have failed to bring settlement far too many times, that we are now watching them fail again, and that they will continue to fail in the same manner if we do not legislate a better mediation formula.

I have chosen to cosponsor H.R. 9088 because I feel it offers the best solution to the kind of impasse we are now witnessing, a solution that can be accepted by labor and management alike. My distinguished colleague, Congressman Harvey, has made a valuable contribution by designing legislation which allows for the flexibility of means we now sadly lack. With this approach, the right of railway unions to strike is maintained, but on a selective basis. Should this option fail, the President may invoke a 30-day "cooling-off" period, and any permanent impasse may be settled by an impartial panel which would consider final sealed offers. With this measure, the President is given a wide variety of mediation alternatives which he might appropriately apply to the specific rail or air dispute.

Since H.R. 9088 dictates no sequence of mediation alternatives. the President is free to apply them in whatever order he feels is most effective and most conducive to settlement. It has been argued and I quote:

> The cumbersome procedure of the Railway Labor Act, supposed to assure peace on the railroads, now appears to assure only eventual congressional intervention.

Much of the objection to the present mediation formula stem from the argument that the formula, itself, creates the irreconcilable differences leading to strike. By settling procedures which only postpone a strike, both labor and management are encouraged to forward the most extreme version of their offers as they look forward to the certainty of Federal mediation or even Congressional intervention. As President Nixon has stated:

> Over the years, the members of one Emergency Board after another have concluded that little meaningful bargaining takes place before their involvement. Most of what happens in the early bargaining, they report, is merely done to set the stage for the appearance of the Federal Representatives. Designed as a last resort, the emergency procedures have become almost a first resort.

The bill presented to you by Congressman Harvey can alter this pattern. It allows sufficient mechanisms and sufficient time for genuine bargaining to take place, but with a clear terminal point to the negotiating process. Contending parties are encouraged to enter into bargaining, and they are given mechanisms to stimulate that bargaining. Yet in the event of a complete breakdown in negotiations, one which has exhausted all of the mediation alternatives, this country is spared the dangerous possibility that 46 percent of its meat and dairy products will fail to reach the consumers, that 70 percent of the coal used by utilities and heavy industry will stand unused, and that 63 percent of chemicals—including those used to purify water supplies—will not reach their proper destination. This country is spared such threats to its health and welfare, and Congress is relieved of the burden of meeting in emergency session, when political considerations and even the possibility of a filibuster may dictate the ultimate settlement, unwise or unfair though it may be.

Mr. Chairman, I began this discussion with some reservation over my own credentials to treat this matter; yet I feel it a great privilege to be a part of these hearings and to participate in the design of legislation which is of the highest importance to our citizens and to the rail and air transportation industries and their employees. The urgency which I have expressed in discussing the need for this legislation has been reflected many times in the mail I receive from my District and, in conclusion, I would like to submit for the record a letter from one of my constituents, Mr. D. W. Pixley, as an indication of the kind of reaction I am receiving. I share with Mr. Pixley the hope that "before too many more months roll around, some effective permanent legislation, fair to the shipping public as well as the carriers and unions, will become effective."

(The letter referred to follows:)

THATCHER GLASS MANUFACTURING CO.,
Elmira, N.Y., July 22, 1971.

HON. H. ROBISON,
House of Representatives,
Washington, D.C.

DEAR MR. ROBISON: The continual parade of crises, strikes, deadlines, threats, postponements, hearings studies and talks concerning the railroad labor situation has reached a point of absurdity! As one member of the shipping public, I strongly resent the ridiculous amount of time and money spent to defend ourselves against these kind of activities. Large and small unions have been allowed to throw this nation into one crisis after another and I think the time for equal concern for the public welfare is at hand.

Our industry must prepare for each threat of a stoppage by bringing in raw materials far in excess of normal demand. In the case of the current selective stoppages, cars have to be located and diverted and alternate means of transportation sought. These means are invariably far more costly, bearing in mind the most economical means are normally used. When the crisis ends, we find we have expended a great deal of time and money and produced nothing for our company.

The damage to the railroad industry, already sorely troubled, is incalcuable. Revenues are lost, traffic is diverted to competition, probably never to return in some cases. Traffic flows are disrupted during selective striking, as we are now witnessing, and after the brotherhoods go back to work, it will be some time before things return to normal.

The unions themselves have watched their numbers dwindle and their public image is not good. They have exhibited a stubborness, particularly in the matter of work rules, some of which are positively stupid, that is almost unbelievable.

The Congress has not, in my opinion, faced the situation squarely. Hasty actions to get the men back to work usually involve postponements, ostensibly for further study or in the heady hope some settlement can be reached before the next deadline.

We feel that Congress is the only place we have to go, but to this point, we can only term their performance disappointing.

I respectfully urge you to do all in your power to get hearings on this vexing situation scheduled and underway without any more delay. Hopefully, before too many more months roll around, some effective permanent legislation, fair to the shipping public as well as the carriers and unions, will become effective.

Very truly yours,

D. W. PIXLEY,
Assistant General Traffic Manager.

Mr. JARMAN. Thank you, for a very thoughtful statement, Mr. Robison.

Mr. ROBISON. Thank you, Mr. Chairman, for affording me the opportunity to express my views on this important legislation.

Mr. JARMAN. Next we shall hear from our colleague from the State of Massachusetts, the Honorable F. Bradford Morse.

Please proceed as you wish, Mr. Morse. It is good to see you this morning.

STATEMENT OF HON. F. BRADFORD MORSE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MORSE. Mr. Chairman, the rail strikes which have occurred in the recent past and which are now again confronting the Nation demand the serious attention of this committee and of this Congress. I am glad to join with all of our colleagues who have expressed their support of these hearings. We trust that this distinguished committee will bring forth legislation which reflects fully the wise and careful deliberations which you are now commencing.

My testimony today will be brief, but I do want to record my support of the legislation which our colleague, Jim Harvey, has described to you earlier in these hearings. This bill manages, in my opinion, to achieve a reasonable balance between the legitimate, but conflicting, demands of labor, of the carriers, and of the public. In addition, it provides a much greater incentive than now exists for the parties to the dispute to settle their own differences without inevitably reaching the point of strike.

Moreover, the bill achieves one additional objective—that of assuring that the Congress would never again be called upon to act as arbitrator for individual disputes. This objective is difficult to attain without invoking compulsory arbitration by the executive branch, but I believe we have accomplished it in this bill. Several mechanisms would operate to assure this end: First, the variety of options open to the President, and the uncertainty as to which option he would choose, both operate to induce the parties to avoid governmental intervention if at all possible. Second, the availability of the final offer selection option would have a dual effect: it will act to drive the negotiating positions closer together—rather than further apart as would compulsory arbitration—thus decreasing the probability of an unresolved dispute, and it provides a mechanism by which the President can insure, if necessary, that a settlement is reached without public harm or congressional action. Finally, the language of the bill specifies explicitly that, while the President can permit limited selective strikes or allow for further bargaining, he must eventually opt for final offer selection if the parties will not agree and the public welfare demands the cessation of a strike.

The issue of limited selective strikes is a difficult one, and it requires our careful attention. The right of every citizen to work only under conditions acceptable to himself is obviously one which must be preserved in our free society. How to balance that right against the right of all other citizens to pursue their own occupations without undue disruption is the question which must be answered.

I believe that the solution lies in allowing selected strikes, comparable effectively to what happens in other industries. But those strikes, while called by the unions, must be circumscribed to protect the public. The bill which we are sponsoring provides such limitations in three ways. First, it limits such strikes to 20 percent of the ton-mileage of the rail industry. Second, it permits the President to require that certain essential goods be transported, and third, it enables the

President to stop such limited strikes when the conditions demand it. This would occur when, in the judgment of the President, the cost to the country is greater than the benefit of the strike toward bringing about a settlement of the dispute. Together, I believe these three limitations would enable the country to preserve the basic rights of labor as well as to meet the essential need of the Government to be accountable for the overall well-being of the Nation.

In conclusion, I would like to thank the committee for giving me this opportunity to testify before you. I applaud your distinguished chairman's decision to hold these hearings, and I urge your serious attention to this bill which has already received the support of 55 Members of the House. While the problem is unquestionably difficult to resolve, I feel sure that this committee will meet its clear responsibility and will this year report to the House, legislation which all of our colleagues can join in supporting.

Mr. JARMAN. Thank you, Mr. Morse, for sharing your views with us today.

Mr. MORSE. Thank you, Mr. Chairman, it has been my pleasure.

Mr. JARMAN. Our next witness today is Mr. Stuart G. Tipton, president, Transport Association of America.

Mr. Tipton, it is good to have you back with our subcommittee, and we will value your good counsel.

You may proceed in your own fashion.

STATEMENT OF STUART G. TIPTON, PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA; ACCOMPANIED BY EVERETT M. GOULARD, COUNSEL, AIRLINE INDUSTRIAL CONFERENCE, AND VICE PRESIDENT, INDUSTRIAL RELATIONS, PAN AMERICAN AIRWAYS

Mr. TIPTON. Thank you, Mr. Chairman. At the outset, I would like to introduce Mr. Everett Goulard, at the present time counsel of the Airline Industrial Conference, and longtime vice president, industrial relations of Pan American Airways.

Also, at the outset, I would like to point out that the testimony I have before you today is somewhat longer than I am accustomed to present to the committee, because of the many important issues involved in the legislation. But I would like to point out at the outset, too, that about half of the thick package you have before you is an appendix, which I will not present orally to the committee, but at the proper time will ask to have included in the record. I will proceed with my prepared statement.

Mr. JARMAN. The committee will be glad to receive the plat for the record, and you may present any part you wish.

Mr. TIPTON. Thank you, Mr. Chairman.

My name is Stuart G. Tipton. I am president of the Air Transport Association of America, a trade and service organization representing virtually all the scheduled airlines of the United States. Association members include the domestic trunks, the U.S. international airlines, the local service airlines, and the Hawaiian, Alaskan, and all-cargo air carriers, which together form the backbone of the industry's air transport system.

We appreciate the opportunity to come before this committee and express our views concerning strikes in transportation. Thus far in these hearings, the attention has been focused primarily on railway labor problems. We are here today, however, to ask you to focus on airline labor problems also. We too operate under the Railway Labor Act and we too are encountering difficulties which merit the attention of the Congress.

Until a few years ago, the airlines were unique in industry as they kept lowering fares in the face of rising costs. Technological improvements partially offset normal increases in wages and other costs. Not long ago, it began to be apparent that this process would not work any longer. Airline wages began rising at a rate which exceeded most other industries. Fares had to be raised to meet rising wages. Members of Congress and others understandably criticized the fare increases, but no one pointed out the main cause of the problem—the tremendous increase in airline wages. Wages have gotten out of hand because collective bargaining was not working as it was intended to.

When the administration's bill, H.R. 3596, was presented to the Congress more than a year ago, we welcomed this indication of desire on the part of the Government to examine these problems in detail and to seek solutions. We still do recognize that H.R. 3596 is a good contribution to the thinking on this subject. However, upon a careful analysis of the effect of the legislation upon airline industrial relations, we came to the conclusion that it is not adequate, that it does not provide needed protection for the interests of the airlines, their employees, their customers, and the areas they serve. Nor does it hold any promise of checking the constant rise of transport labor costs which have resulted in higher prices and reduced service to the consumer. There are several reasons for these conclusions—I will state them briefly.

H.R. 3596 provides that the Government will not consider intervention in a transportation labor dispute unless the national health and safety is imperiled. This standard is so rigid that it would be the most extraordinary air transport dispute which would receive Government attention. The airlines do not engage in national bargaining and, consequently, strikes that affect airlines are limited to individual carriers. Thus, while an airline strike could do great public damage and cause great inconvenience, it could not be found that the national health and safety is imperiled. In addition, H.R. 3596 takes a sort of meat ax approach to the Railway Labor Act eliminating both the provisions which have proven useful and those that need replacement.

The railroad industry, also covered by the Railway Labor Act, reached the same conclusion in its study of the administration bill. Consequently, both industries created expert groups to work together to determine whether a constructive alternative could be proposed. After months of study, this joint group produced a bill which it regards as a better method of avoiding strikes in the railroad and airline industries, one that preserves the best part of our present system, accepts some of the principles of the administration's bill, and develops other approaches that are not included in either. Both industries have approved this proposal and it is pending before the committee as H.R. 9989, introduced by Mr. Jarman, by request. In essence, it proposes the following steps.

If, after having gone through the negotiations and mediatory process of the Railway Labor Act, a dispute is not resolved, it is considered

by a panel appointed by the Secretaries of Commerce, Labor, and Transportation. After investigation of the dispute the panel recommends to the three Cabinet members one of the following four courses of action:

1. That the Government do nothing and thus release the parties for an economy test of strength, if they care to have one;
2. That a board be created to determine the facts and make recommendations much as the present emergency boards do;
3. That a board be created to make a binding determination that one of the last offers of one or the other party constitutes the contract between the parties; or
4. That the dispute be submitted to binding arbitration.

In making this determination as to whether to intervene or not to intervene, the Secretaries would be able to take into account a very wide range of public interests and would not be required to restrict themselves to the narrow consideration of the concept of the "national health and safety." They could consider the impact of the strike upon a region of the country where the impact may be very severe from the standpoint of the economy of the region and of the people living there. They would be able to consider the inflationary effects of a possible strike settlement upon passengers and shippers, and upon the economy as a whole. They would examine the impact of a strike or a high wage settlement on the continued viability of a needed airline. In the case of international airline service, they could take into account the ability of the U.S. carriers to maintain service and competitive ability required in the national interest.

The Government should not bind itself to ignore major aspects of the public and consumer interest in determining whether Government intervention is justified. On the other hand, by giving the three Cabinet Secretaries the discretion to withhold Government intervention entirely, Government participation in labor-management disputes would not become so extensive that the parties would be discouraged from true collective bargaining. As a matter of fact, the very flexibility and uncertainty which are created by the options made available to the Government will encourage such bargaining. Neither party will have assurance that the Government would intervene or, if intervention is decided upon, what course of action would be adopted. Rather than being faced with all these unknowns, the bargainers should and would be anxious to settle their problems among themselves—a course of action that all of us prefer.

IS ANY LEGISLATION NEEDED?

I will not address myself to the threshold question which is in the mind of all members of the committee: Why should any legislation be passed providing for special Government treatment of railroad and airline strikes? There are many good and sound reasons for doing so. I will set them out as they relate to air transport.

ESTABLISHED CONGRESSIONAL POLICY

The first reason is that Congress has already decided that both industries require special governmental treatment. Implementation of the national policy as expressed by the Congress in the Railway Labor

Act, Federal Aviation Act, and Department of Transportation Act requires enactment of special legislation.

In 1936, Congress determined that the public interest in air transportation required that the industry should be made subject to the Railway Labor Act. The first purpose of that act as expressed by Congress is: "To avoid any interruption to commerce or to the operation of any carrier engaged therein."

Under the Federal Aviation Act of 1958, Congress has provided in the declaration of policy, that the Civil Aeronautics Board shall consider as being in the public interest and in accordance with the public convenience and necessity:

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation. . . .

The Department of Transportation Act of 1966 provides in part in the declaration of purpose:

(a) The Congress hereby declares that the general welfare, the economic growth and stability of the Nation and its security require the development of national transportation policies and programs conducive to the provisions of fact, safe, efficient, and convenient transportation at the lowest cost consistent therewith. . . .

Economical air transportation to localities, regions, and the Nation is of evergrowing importance. The public interest in uninterrupted air transportation is greater today than it ever was. However, the declarations of national policy cited are not being supported by the existing collective-bargaining stuctures and procedures. Interruptions and threatened interruptions to the operations of carriers are occurring far too frequently. Economical and efficient air transportation cannot be continued if excessive labor cost increases continue to force rates and fares upward as they have in the recent past and are doing today.

IMBALANCE OF BARGAINING POWER

The second justification for special governmental attention to airline strikes is the presently existing imbalance in bargaining power between unions and management in the air transport field. It is this imbalance which has resulted in the excessive labor costs in the airline industry. This imbalance results from a number of fundamental characteristics of the airline industry.

The airlines cannot stockpile their product as can manufacturers. A manufacturer, such as U.S. Steel or General Electric, in anticipation of a strike, can produce sufficient quantities of its products in order to have an inventory from which to supply the demands of customers for the duration of a strike with no great loss of revenue or competitive position. However, the airline product, in essence, is passenger seats and cargo space flown, and once this capacity is not used, it is gone and cannot ever be recouped. Virtually all revenue is stopped and only expenses remain.

The airlines have sought to establish some protection from these disastrous consequences by entering into what is referred to as the mutual aid agreement. In brief, the agreement provides that if an airline is struck, those competing airlines who transport its traffic are required to return to the struck airline the revenue from that traffic,

less direct expenses. If these payments by competing airlines do not aggregate a specified percentage of normal operating expenses of the struck airline, all of the parties to the agreement make sufficient contributions to bring the total payment up to that percentage.

This agreement has helped, but it fails completely to solve two other major problems a struck airline encounters. In recent years, in order to take advantage of technological improvement, the airlines have been required to incur enormous capital expenditures—$10 billion since 1965. The agreement does not contribute toward the payment of interest expenses. Much of the money has had to be borrowed, and borrowed at a very high cost. The long-term debt of the air transport industry at present is approximately $6 billion. The airlines' debt equity ratio stands at 66:34, a sign of financial weakness. Total interest expense for the industry in 1970 was $384 million, more than a million dollars a day. During a strike, these payments must be made and the agreement does not cover them.

An even more important weakness in the mutual aid agreement is that its provisions obviously cannot protect the competitive position of the struck carrier. The air transport industry is a highly competitive business. Of the 400 top air transport markets in the country, 320 of them are served by at least two carriers and 60 of them by three. On major routes in the international field competition is even heavier. There are 20 carriers operating in the North Atlantic to Europe, plus a host of U.S. and foreign supplementals. When a carrier is struck, his competitors transport the share of the market that he has struggled so hard to attract and he knows that it will take him months and years to get it back.

Further contributing to the imbalance in power of the parties in airline collective bargaining is the bargaining structure which is based on individual carrier negotiations. There is no multicarrier bargaining and their is no national handling of negotiations. This bargaining structure thus creates an ideal situation for the unions to exploit whipsawing tactics to pressure the carriers into costly bargaining concessions.

The whipsaw tactic can be tried whenever a union is engaged in negotiations with two or more carriers at the same time. In that situation, the union may initially press two demands on both airlines. It may then obtain Airline A's consent to one demand in return for some compensating union concession, in the same way it may obtain Airline B's consent to the other demand. The union will then tell Airline A that Airline B has already accepted this other demand and that it must therefore accept that demand also or be struck. The union tells the same thing to Airline B about the first demand. In this way, the union takes advantage of the absence of coordination of strategies between the airlines involved, and plays on their natural fear of and resistance to a strike. More often than not, by this whipsawing process, the union is able to force acceptance of most of its major demands from all airlines.

The whipsaw tactic is used not only by one union against those carriers on which it represents employees, but also among the unions representing the same craft or class of employees on different carriers. This whipsaw tactic for inflating settlements is well illustrated by the mechanic negotiations concluded in 1969 and 1970. First, Amer-

ican settled for a top hourly rate of $5.16, and Pan American for $5.23, with the TWU. Next, on Western, the IBT was able to obtain $5.60 an hour, plus a dental plan. This was followed by IAM settlements on United of $5.62 an hour; on TWA, $5.65 on hour; on Texas International, $6.13 an hour; and on Frontier, $6.35 an hour. Also escalated in these negotiations were cost-of-living, shift differentials, and other labor costs. Now, in 1971, with mechanics negotiations being reopened, the carriers which settled first in 1969 were 13 percent behind in wages and fringe costs and opened negotiations in the face of the 1969 pyramid of labor costs obtained by steppingstone and whipsaw bargaining.

Multiplicity of unions in the airline industry and the number of crafts or classes with which a carrier must negotiate are other factors which contribute to the lack of parity in airline collective bargaining. The National Mediation Board currently recognizes 10 different crafts or classes which are as follows: Mechanics; radio and teletype operators; clerical, office, stores, fleet, and passenger service; stewards, stewardesses, and flight pursers; pilots; dispatchers; meteorologists; flight engineers, flight navigators; and flight kitchen and commissary employees.

Under the craft or class bargaining structure in the airlines, the continued operation of a carrier is threatened frequently. In a period comparable to, for example, the term of a labor contract for a manufacturer under the Labor-Management Relations Act, an airline can be confronted with as many as eight or nine actual strikes or threats thereof. When General Motors, Ford, U.S. Steel, et cetera, enter negotiations, the concluding of an agreement should insure stability for the company for the period of the contract term. When a strike occurs and is resolved, the employer does not face another threatened interruption of business for a reasonable period of time.

Based upon the bargaining structure that is characteristic of the air transport industry, the unions can also pick and choose among the carriers based upon the relative financial strength of the carrier concerned. The stronger carrier might well be prepared to take a strike even with the disastrous consequences previously described. A weak one might not be able to survive. The national unions conduct their individual bargaining skillfully and are, of course, able to tell the strong from the weak. Choosing a financially weak carrier, they can establish wage and fringe benefit patterns which even the strong carrier cannot later resist.

Interunion rivalry for larger settlements also plays a large part in weakening the position of carriers in negotiations. In many crafts or classes in the airline industry, there are two or more industrywide unions representing workers of the same craft or class. There is a strong motivation for each to demand settlements larger than those obtained by the rival union. This is particularly acute among certainground employees. Clerical employees are represented by the Air Line Employees Association (ALEA), Brotherhood of Steamship and Airline Clerks (BRAC), and the International Brotherhood of Teamsters (IBT). Within the past 2 years, there have been three strikes by these unions: The IBT strike against Pan American, August 8–11, 1969; the ALEA strike against National, January 31–May 27, 1970; and the BRAC strike against Northwest July 8–December 14, 1970. In

each case, an element in the dispute was the demand of the union that its settlement be superior to a recent settlement obtained by a rival union on another carrier, or that it be sufficiently higher to enable the union to claim superior bargaining ability to that of its rivals.

The Northwest dispute also illustrates another aspect of interunion rivalry which contributes to escalating labor costs. In the Northwest dispute, the BRAC informed the carrier that it would have to match the Teamsters' latest trucking agreement because the Teamsters had successfully raided the BRAC on Braniff and Pan American for the representation of clericals.

In saying all this, there is no intention of criticizing unions or charging them with tactics which are in any respect unethical under the existing rules of the game. The point being made is that, in this economic contest, the unions have an ax and the airlines have a penknife. The imbalance of strength at the bargaining table is severe. Even that might not justify congressional intervention if no public harm resulted from the imbalance, but public harm does result. Air transport consumers, both travelers and shippers, have been and will be required to suffer price increases and service reductions which are sufficiently serious to justify congressional attention and action.

IMBALANCE AT THE BARGAINING TABLE RESULTS IN PUBLIC HARM

The public harm that is referred to is increased prices and reduction of service to consumers and impairment of the financial stability of the airline systems.

Until the latter part of the 1960's, the introduction of jet aircraft provided enough productivity gain to offset the unit cost increases in wages and other inflationary pressures of the major airlines. This enabled the airlines to improve the value, the quality, and quantity of service, and reduce prices at the same time. The average fare per passenger-mile, or yield, declined for 6 consecutive years between 1962 and 1968, while consumer prices climbed by about 15 percent. As you will note in the chart [1] in which the airline price index, so-called, is carried with the consumer price index, it shows graphically the statement I have just made, the behavior of airline prices between 1962 and 1968. Then labor costs began to rise to alarming levels and since such costs are 50 percent of total cash operating costs, it was no longer possible to dampen their effect.

Airline wage settlements have been outpacing those of most other industries. While the average salary for airline employees increased by only 3 percent in 1966, approximately the rate of increase in U.S. industry productivity, average salaries climbed 5 percent in 1967; 8 percent in 1968; 10 percent in 1969; and 15 percent in 1970. That is graphically shown by the chart [1] on the right. The average airline employee in 1970 earned $12,307, as compared with $6,248 for the average American worker. Workers in manufacturing are paid an average of $3.36 per hour. The average airline employee earns $5.92 per hour.

Flight crew members—pilots, copilots, and flight engineers—in 1965 earned on the average $19,700; in 1969, $24,600; and last year were

[1] Charts not printed, used for display at hearing only.

paid $28,800. The top 600 airline pilots in 1965 received an average of $39,700, including fringe benefits and spent an average of 56 hours per month on the flight deck. In 1970, the top 600 pilots received an average of $58,400 and spent 48.5 hours per month on the flight deck, an increase of 47 percent in compensation and a reduction of 13 percent in productive time.

If unit wage increases in the industry since 1966 had increased at the same rate as inflation in the U.S. economy (consumer price index), airline costs would have been reduced by $600 million last year and the airlines would have made a profit before taxes of $370 million.

Being unable to dampen these cost increases by increased productivity, there has been a significant downward trend in the industry's financial posture. Since 1965 when our return on investment amounted to 12 percent, it has continually dropped, and in 1970 was a mere 1.5 percent. The industry suffered its first loss since 1960 and the worst one in its history—$179 million after taxes. We forecast a further substantial loss for 1971.

Normal recession cost cutting has not been enough to offset the high labor costs. Profits have continued to plummet. With carriers continuing to strive to reduce costs to improve their financial positions, the airline customer is now being confronted with flight reductions. From 1962 to 1969, the number of annual flights increased for 7 consecutive years, jumping from 3.7 million to 5.4 million. Also, during this period, the average number of seats per flight increased significantly with the introduction of larger aircraft. All of this provided the traveler with ample capacity when and where it was desired. In 1970, the number of airline flights dropped to 5.1 million. In the second half of last year, the carriers found it necessary to begin reducing flights on a unilateral basis. By May 1971, there were 5.2 percent fewer domestic flights scheduled than in May 1970, resulting from the elimination of 700 daily flights. This will continue. Several carriers are currently involved in plans to further reduce flights on a multilateral basis if approved by the CAB. There is no doubt that cuts in flights have been needed to further reduce costs and some of the cuts have not seriously impaired public service. A considerable amount of service cutting, however, has been on short-haul and thin routes where the public needs is most.

Notwithstanding this cost cutting, service reduction, and the furloughing of approximately 12,000 employees, it still has not been possible to solve the financial problem, and prices to the airline passenger and shipper had to go up. As a result of the first round of fare changes, the average yield has risen from 5.46 cents in 1968, to 5.78 cents in 1970, approximately 6 percent. The illustrates chart [1] the extent to which airline prices are now beginning to approach their 1960 levels. In April of this year, the CAB approved an across-the-board immediate increase of 6 percent in domestic fares and a tentative additional 3 percent increase later this year.

These rising costs have had a particularly adverse effect on airline travelers in short-haul markets. The airline fare structure is cost oriented. Since wage costs per available ton-mile are higher in short-haul markets than in long-haul ones, fares on short-hauls have had to be increased significantly as a result of wage settlements. Between 1968 and 1970, the average yield per passenger-mile for the regional

airlines has increased from 7.56 cents to 8.43 cents, up 12 percent. This, of course, is the average, but let's examine what has happened to certain fares in some specified short-haul markets during the past several years. You will note that in that table the list of markets concerned and the extent to which these prices have had to go up. And in cases, of course, as you can see, range from 25 percent up to in one case, 57 percent.

(The table follows:)

Short-haul market	One way coach fares (excludes tax)		
	June 1971	June 1968	Percent increase
Washington to New York	$23.15	$17.00	36
Boston to New York	22.22	16.00	39
Cleveland to New York	36.11	28.00	29
Washington to Pittsburgh	22.22	17.00	31
Greensboro to Richmond	21.30	17.00	25
Spokane-Portland	28.70	23.00	25
Columbia (Mo.) to Kansas City	[1] 20.37	[1] 13.00	57

[1] 1 class fare.

Mr. TIPTON. Even with the fare increases; the regional airlines have not been able to increase fares to cover the losses on their uneconomic routes. As a result, subsidy payments to regional airlines have now increased. In fiscal year 1971, subsidy for regional airlines increased to $58.6 million from $14.3 million in fiscal year 1970. This followed 7 consecutive years of decline in such payments. Even with increased subsidy, regional carriers lost $58 million in 1970.

The U.S. airlines flying international routes are also in a disadvantageous position relative to the wage burdens they must support. In 1970, for example, U.S. scheduled airlines international and territorial operations sustained a loss after taxes of $32 million. These carriers must, in most cases, compete head-to-head on major routes with foreign flag airlines. The average annual wage of a U.S. airline employee in 1970 was $12,300. This is more than twice that paid by foreign carriers.

Consider, for instance, that Pan Am must compete across the North Atlantic against BOAC. The captain of a Pan Am 747 jet earns about $68,500 per year. The BOAC captain, however, earns around $22,000. At a uniform fare level, therefore, the U.S. carrier must somehow compete for the traffic and still earn a profit, even though handicapped by a wage disparity. Some wage differentials between U.S. and foreign workers are inevitable, but the extraordinary settlements of the past few years are impossible to overcome.

In summary, the airlines, during the past several years, have experienced significant wage pressures which have caused an increase in airline prices. These belated price boosts, however, have not been sufficient to offset the inflationary spiral. Consequently, a decline in earnings has continued to a point where last year, the industry suffered its worst financial loss in history. In an effort to cut costs to the bone, the carriers have had to reduce flights. All of this has had an adverse effect on the consumer with fares and rates increasing and schedules decreasing.

H.R. 9989 IS THE BILL BEST DESIGNED TO AVOID THIS PUBLIC HARM

The foregoing establishes the need for congressional action to provide for improved collective bargaining in the airline industry. The only question is what should be the form of that action. Several proposals have been made, but we believe that H.R. 9989 is the best proposal thus far for the handling of unresolved negotiating disputes. I described the outline of that bill at the outset; now I would like to discuss it in more detail.

The three Cabinet members would review all unresolved disputes in the airline and railroad industries, and this is as it should be. And such dispute, whether on a large or small carrier, or group of carriers, potentially can disrupt transportation so as to seriously interfere with the transportation of passengers, mail, and cargo. More importantly, though, any such dispute, if left to the economic warfare, can result in an inflationary settlement damaging to the Nation's economy, adversely affect consumers of transportation, impair our international position, or otherwise adversely affect the public interest.

Having reviewed the dispute, the three Cabinet members have a variety of choices, choices which are tailored to meet the exigencies of varying bargaining situations. One alternative is to do nothing and leave the parties to self-help. This would be applicable in those situations where it is determined that the dispute has insufficient impact on the public interest to warrant intervention.

A second, the appointment of a neutral board to make nonbinding settlement recommendations would be appropriate where the parties may be close to an agreement. However, they may be deadlocked on issues which can be resolved through the objective recommendations of a third party.

A third procedure would be the appointment of a panel to decide which of the parties' final offers is the more reasonable and should be the contract put into effect. It would bring a dispute to a legal conclusion by establishing a contract between the parties. No restriction on duration is placed on the offers and a dispute would be ended for the contract duration. Since the panel would select the most reasonable of the parties' final offers, presumably both parties would move to realistic settlement areas and the dispute could even be settled in negotiations prior to the panel making its decision.

The fourth procedure would be binding arbitration. The inclusion of final and binding arbitration in an arsenal of weapons is sometimes met with a shudder by both labor and industry, but in many cases it would be preferable to the present system. The principle of disinterested third-party determinations in life-and-death questions of criminal law is readily accepted. Also, there is no hesitancy to permit a jury to determine the dollar value to be placed on a man's legs or his eyes. Nor is it regarded as horrendous to give to a Government agency the power to determine how much a consumer shall pay and how much a carrier shall get for air transport and rail service.

Review of stalemated collective bargaining disputes by Cabinet-level officials and presenting them with these choices would strengthen true collective bargaining in the airline industry. In our opinion this is the greatest virtue of H.R. 9989. The uncertainty of any intervention would stimulate bargaining.

In such a situation, no employer could fail to strive for a settlement because he could not be sure that a strike would be prohibited. On the other hand, no union could go through negotiations or mediation in a perfunctory fashion because it could not be sure that it would be permitted to strike. Where the parties to a dispute believe that the decisionmaking will or may be taken out of their hands, they will exert every effort to reach an agreement. The parties prefer a reasonably satisfactory compromise to the uncertainties of a decision by a third party which could be unsatisfactory to one or both of the parties immediately concerned. This is borne out by the experience of employers and unions which commit themselves voluntarily to binding arbitration prior to negotiations. Most agreements are concluded expeditiously in a much large percentage of cases than in those instances where arbitration agreements do not exist.

As an example, for several years Pan American has had agreements with certain of its unions to arbitrate future unresolved contract disputes. The result has been that a much higher percentage of cases have been resolved in direct negotiations and in mediation, than has been true in the absence of such agreements. In fact, dozens of contract disputes have been resolved amicably and expeditiously over the bargaining table because of the existence of these agreements to arbitrate, while only two cases have gone to final and binding arbitration. Unfortunately, Pan Am has been able to persuade only a few unions to sign such agreements to arbitrate, while other carriers have not been successful in obtaining any such agreements.

A comparable situation under the Railway Labor Act relates to "minor" disputes—those disputes which involve the interpretation and application of an existing contract. Minor disputes are subject to final and binding arbitration. Nonetheless, over 90 percent of the grievances filed are adjusted without the need to go in arbitration.

OTHER BILLS BEFORE THE COMMITTEE

There are quite a number of other bills before the committee, all of which have the same objective—to reduce the public harm caused by transportation strikes without requiring constant reference of these disputes to the Congress. The fact that the committee has many ideas before it on this important subject is all to the good and the proposals should be discussed in full recognition that they do seek the same objective and that each one will make an ultimate contribution to sound legislation.

UNNECESSARY AMENDMENT OF THE RAILWAY LABOR ACT

The administration bill goes much too far in amending the Railway Labor Act. The emergency provisions of that act have not worked and thus should be revised, but most other provisions are not subject to that criticism.

H.R. 3596 would eliminate the present requirement of the Railway Labor Act that the parties must continue good-faith bargaining through a mediation period determined by the National Mediation Board before resorting to self-help. In its place, the bill would allow either party to reject mediation and would introduce into airline and

railroad negotiations the fixed term contract concept of the Labor-Management Relations Act. It would, however, retain the present vertical collective bargaining units provided by the craft or class structure of the Railway Labor Act. The combination of fixed term contracts and the numerous systemwide collective-bargaining units of the craft or class structure would produce labor chaos in the airline industry. Imagine, if you will, an airline faced with successive systemwide strikes of pilots; flight engineers; flight navigators; flight dispatchers; stewardesses and pursers; radio and teletype operators; mechanics; and stock and stores employees, each of which is presently recognized under the Railway Labor Act as a separate bargaining unit.

In addition, the administration bill would wipe out one of the most valuable of our Federal laws in terms of the maintenance of labor peace. The Railway Labor Act prohibits strikes over questions of interpretation of collective bargaining contracts, so-called minor disputes. These are settled in the air transport industry by conciliation or if necessary by binding arbitration.

These are just two examples of the adverse effect of the wholesale revision of the Railway Labor Act. We hope the committee will address itself to the real problems arising out of that act, and not go any further than is necessary to solve those problems.

PROCEDURES FOR SETTLING A DISPUTE

The various measures proposed to encourage settlements, the order of their use and the standards governing their employment differ extensively among the various bills before the committee. Consequently, in order to be reasonably brief, I will probably deal inadequately with them.

In making judgments as to the effectiveness of these measures to be employed, it is crucially important that they place nicely balanced pressures on both parties to the dispute. The objective is to achieve a settlement, but the public interest in such a settlement is not limited to the continued availability of transportation service at any cost. In response to the pressures of a threatened strike, management can err in two directions. It can refuse to concede wholly justifiable demands of its employees. But it can also agree to excessive settlements with the intention of passing on these extra costs to the consumers that it serves. Settlement measures which pressure management in either of these directions are equally bad.

In examining the bills before the committee, other than H.R. 9989, it has appeared to us that they do not contain this nice balance which is required in the public interest. The pressures on management to settle on any terms might be so heavy as to invite them to take the easy course of making the consumer pay.

All of the bills seem to require as a condition precedent to governmental action too great a showing of public harm. The design of congressional standards appears to have been guided solely by the concept that so long as transportation needs are met, no other public interest, such as the cost and efficiency of transportation need be met. I contrast this with the proposal of H.R. 9989 in which a Cabinet committee can review any anticipated strike in the railroad or airline industries and make a determination, on the basis of all the public

interests involved, whether the disputes merit Government attention and the measures to be used.

Those bills which provide for mandatory partial operations by a carrier impose undue pressure on a carrier to settle unwisely because an enforced partial operation can be more costly and destructive than a strike. Airlines and railroads are integrated units made up of profitable and unprofitable operations. In the case of mandatory operations, there can be no assurance that this balance would be maintained.

The utilization of the selective strike is subject to this same criticism of imposing undue pressure on management. At the present time, where national bargaining is being conducted, selective strikes can be used by the unions, but only after due notice, and in pursuance of a national contract. The courts' permission to conduct selective strikes where national bargaining is being used has already weakened management's position severely but, if all limitations are withdrawn, the way is open for the type of whipsawing which has characterized airline negotiations and has contributed so much to the increased cost of air transportation to the public.

The use of seizure as a method of securing settlements again weakens management's position without any corresponding pressures upon the unions to settle. Seizure by the government of a private transportation system is, of course, a drastic measure. Anticipating such a governmental step, management might well be prepared to act irresponsibly in granting demands which would then have to be paid by the users. Seizure can also form the basis for unending litigation between the employer and the government as to the extent of injury by reason of seizure. Furthermore, the risk of ultimate or even immediate socialization is present, such as resulted a few years ago after a New York City bus strike. Before the strike buses were privately owned and operated, but during the strike they were seized and never returned to private operations.

CONCLUSION

This concludes my testimony, Mr. Chairman. However, H.R. 9989 includes other amendments to the Railway Labor Act which, while important and necessary, do not need to be presented orally to the committee at this time.

An explanation and justification is set forth in the appendix to my statement and, Mr. Chairman, I would ask that the appendix be included in the record with my statement.

Mr. JARMAN. It may be so included, Mr. Tipton.

(The appendix to the statement of Mr. Tipton follows:)

APPENDIX

OTHER AMENDMENTS TO THE RAILWAY LABOR ACT INCLUDED IN H.R. 9989

In addition to the proposed amendments to deal with stalemated collective bargaining disputes, H.R. 9989 contains several other amendments to strengthen the Railway Labor Act. Many of these proposed changes would amend the Railway Labor Act to accord with national labor policy established by the Congress since the Railway Labor Act was last amended in any substantial manner. Although the Labor-Management Relations Act has been revised periodically during its history in order to adjust to new problems not anticipated in the original legislation, the Railway Labor Act has not received similar attention. Most of

the additional amendments in H.R. 9980 are designed to accomplish this up-dating and to bring the provisions of the Railway Labor Act into harmony with the national labor policy.

CLASS OR CRAFT HEARINGS

The National Mediation Board traditionally has taken the position that the only parties to any inquiry under the Railway Labor Act as to the class and craft determinations by the NMB are the competing labor organizations or the employees desiring representation, on the one hand, and the employees desiring to remain unrepresented, on the other. The Board has held that carriers are not entitled, as a matter of right, to participate in any manner in any such proceedings. In practice, when the Board has called a public hearing, it has allowed the carrier involved to submit factual information, cross-examine witnesses, and state its position with respect to issues in the dispute. The Board, however, has refused to call a public hearing to adduce testimony on the proper scope of the craft or class at the carrier's request, although it will do so at the request of any labor organization which it considers to be a party to the dispute.

The right of employees to organize and bargain collectively through representatives of their own choosing without employer interference is well recognized. However, the Board has improperly excluded the carrier from the determination of what is the appropriate collective bargaining unit or craft or class. Under the Labor-Management Relations Act, the employer has the affirmative right to be heard on the proper scope of the collective bargaining unit. The reasons for recognizing the employers' interest in how his employees are grouped for collective bargaining purposes apply equally to employees under the Railway Labor Act and the Labor-Management Relations Act. These reasons include a desire to avoid a multiplicity of bargaining units or a grouping of employees having no community of interest within a single unit.

The Board's position on carrier participation in representation proceedings arises in part from the fact that the Railway Labor Act initially applied only to the railroad industry in which the bargaining unit structure was well defined by custom and practice. Issues involved in a bargaining unit dispute, therefore, related more to the determination of which representative was desired by the employees rather than the appropriate collective bargaining unit. As the Board has frequently noted in its determinations, crafts or classes in the airline industry were not as clearly structured at the time the airline industry was brought under the Railway Labor Act as had been true in the railroad industry. The rapid changes taking place in the airline industry, coincident with its growth, have made the crafts or classes in the airline industry much less defined.

Unless one or more of the organizations involved requests a public hearing, the Board presently allows the competing unions to determine the scope of the craft or class according to their judgment of the most desirable grouping of employees for their own purposes. Under those circumstances, the carrier has no opportunity to present to the National Mediation Board factual information to demonstrate the work inter-relationship, community of interest, prior history of collective bargaining, effect of the employee grouping on the carrier's operations or testimony on any other factors which the Board normally uses in determining the appropriate craft or class. Clearly, the carrier should be in a position to request a hearing when bargaining unit questions arise, and whether or not a hearing is granted, have its views considered as a full party to the proceeding.

National Mediation Board craft or class determinations normally are not subject judicial review and, thus, the carrier is left without a remedy if a faulty class or craft determination results in damage to him.

REPRESENTATION ELECTIONS

Traditionally, the National Mediation Board has taken the position that employees under the Railway Labor Act are obligated to select a collective bargaining representative. The Board's theory has been that a representation election is for the purpose of *selecting* a representative—not to ascertain whether in fact the employees desire a collective bargaining representative and, if they do, which representative they wish. Accordingly, the Board has used a form of ballot which does not give the employees the opportunity to indicate that they do not want a collective bargaining representative.

The theory under which the Board has administered representation elections finds no support in the legislative history of the Railway Labor Act. In fact, this

theory has been specifically repudiated in the decision of the Supreme Court of the United States in *Brotherhood of Railway Clerks* v. *Association for the Benefit of Non-Contract Employees*, 380 US 650 (1965), and still more recently in the decision of the United States Court of Appeals for the District of Columbia in the cases of the *International Brotherhood of Teamsters* v. *Brotherhood of Railway and Airline Clerks*, and the *National Mediation Board* v. *Brotherhood of Railway and Airline Clerks* (68 LRRM 2651). Since certiorari was denied by the Supreme Court, the Court of Appeals decision in these cases represents the established judicial construction of the Railway Labor Act with respect to representation disputes.

Looking to the legislative history of the 1934 amendments to the Railway Labor Act, the House report on H.R. 9861 states:

"2. It [H.R. 9861] *provides* that employees shall be free to join any labor union of their choice and *likewise be free to refrain from joining any union if that be their desire* and forbids interference by the carrier's officers with the exercise of said rights." (Emphasis supplied.) (House Rep. No. 1944, 73d Cong. 2d Sess., 1934, p. 2. H.R. 9861 was enacted into law on June 21, 1934, as the 1934 amendments to the Railway Labor Act.)

Similarly, Joseph P. Eastman, Federal Coordinator of Transportation and principal draftsman of the legislation, expressed his view of the bill:

"No, it does not require collective bargaining on the part of employees. If the employees do not wish to organize, prefer to deal individually with the management with regard to these matters, why that, of course, is left open to them, or it should be." (House Rep. 1944, 73d Cong., 2d Sess., p. 2.)

And in the Senate, Senator Robert F. Wagner, supporter of this legislation and author of the National Labor Relations Act, stated his understanding of the bill:

"I didn't understand these provisions compelled an employee to join any particular union. I thought the purpose of it was just the opposite, to see that the men have absolute liberty to join any union or to remain unorganized." (Senate hearings on S. 3266, 73d Cong., 2d Sess., 1934.)

Thus, it is clear that the Congress intended to preserve the right of employees to remain unrepresented.

The Court of Appeals decision in the *IBT* v. *BRAC* case specifically referred to the Supreme Court's construction of the Railway Labor Act confirming the legislative intent and noted that the National Mediation Board has the power to certify to the carrier that the employees do not wish a collective bargaining representative. The Court of Appeals stated:

". . . the Clerks' argument does not and can not vault over the hurdle erected by the Supreme Court's decision in *Brotherhood of Railway Clerks* v. *Association for the Benefit of Non-Contract Employees*, 380 US 650 (1965). There the Supreme Court indicated that employees under the Railway Labor Act were to have the option of rejecting collective representation entirely. The decision precludes a ruling that the Board's sole power is to certify someone or group as an employee representative, imposing on the carrier a duty to treat with that representative. We think the Board has the power to certify to the carrier that a particular group of employees has no representative to carry on the negotiations contemplated by the Railway Labor Act, thereby relegating the carrier and its employees to employment relationships and contracts not presently governed by the Railway Labor Act."

Clearly, the Board should be required to revise its representation procedures in accordance with the established judicial construction of the Railway Labor Act. This can be done in no other manner than to allow the employees an opportunity to vote "no union" if they desire to remain unrepresented.

The national labor policy as expressed by Congress in the Labor-Management Relations Act expressly provides that employees shall have the right to refrain from selecting union representation and makes it illegal to interfere with an employee's right to vote for no representation. No reason whatsoever exists for not giving employees covered by the Railway Labor Act the same protected right to vote against union representation as employees have in all other industries. To deny employees the right to vote "no union" conflicts with the personal liberties of employees and constitutes wrongful interference with their freedom of choice.

JURISDICTIONAL DISPUTES

In addition, we propose that the National Mediation Board be given a statutory mandate to resolve jurisdictional disputes which presently may fester without any permanent resolution.

The Railway Labor Act contains no effective machinery for resolving inter-union jurisdictional disputes which can seriously disrupt stable labor relations on a carrier. Such disputes arise when a union representing a group of employees on a carrier and one or more other unions representing other groups of employees on the carrier disagree as to which group certain employees or prospective employees belong for purposes of collective bargaining. The carrier is caught in the middle by bargaining demands from each competing union and allegations of refusal to bargain. If a carrier does bargain with one, he may in good faith select the wrong union and be in violation of the Railway Labor Act.

The carrier should not be put in this unconscionable position. A jurisdictional dispute as to which group given employees belong for bargaining purposes is, in fact, a representation dispute which the NMB should be required to resolve, just as it is required to resolve other types of representation disputes. Unresolved jurisdictional disputes are even more disruptive of stable labor relations than other types of representation disputes.

The problem which jurisdictional disputes create underscores the need to recognize a carrier as a true party in interest in all representation matters. If two or more competing unions claim a group of employees as being under the respective aegis of each, and no union seeks a representation investigation by the NMB, the carrier must bear the brunt of the dispute, but is powerless under the Act to request a Board investigation and determination of the issues. This is patently unfair to the carrier. Thus, there is a need to correct this deficiency in the Act as administered by the NMB to obtain a representation investigation, as well as a need to provide that a carrier need not treat with any union prior to the Board making a decision on the issues involved.

EXCLUSION OF SUPERVISORS FROM ACT

H.R. 9989 also would eliminate the organiziug of supervisors and subordinate officials, thus bringing the dividing line between management and labor into harmony with that under the Labor-Management Relations Act.

The Railway Labor Act covers every person in the service of a common carrier by air performing the work of "an employee" or "subordinate official." The Act defines those employees entitled to collective bargaining representation as only those employees who perform ". . . work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission. . . ."

Supervisors are a part of management and rightfully should not be treated as rank-and-file employees. The exclusion of supervisory personnel merely recognizes the industrial facts of life. The Railway Labor Act should not permit bargaining relationships in which people are compelled to have conflicting interests.

Under the Board's present determinations, flight instructors who are responsible for the training and evaluation of airline pilots are subject to organization as "subordinate officials" and may be represented by the same labor organization as the pilots they train. Similarly, the Board's determinations with respect to the clerical, office, passenger, and fleet service craft or class has included in the same bargaining unit supervisors and the employees they supervise.

The difficulties such situations cause are obvious. A management employee cannot perform as effectively the essential functious of his job which may involve the discipline or relcase of an employee for just cause, when he is either in the same bargaining unit or represented by a union like the employee whom he evaluates, whether or not the same union, or different unions under the AFL-CIO banner, or tied together by inter-union agreements not to eross picket lines, or the like. The result necessarily is a lowering of performance standards in a business whose very existence depends upon the maintenance of high standards.

Congress recognized the essential conflict of interest in allowiug supervisors to be organized when, in enacting the Taft-Hartley Act in 1947, it specifically excluded supervisors from coverage of the Labor-Management Relations Act. These same considerations warrant changing the Railway Labor Act to make clear the exclusion from collective bargaining of supervisory personnel.

The inclusion of "subordinate officials" under the coverage of the Act for collective bargaining purposes, was not considered in 1936 when Congress added Title II to the Railway Labor Act and thereby extended to air carriers and their employees the provisions of a statute originally enacted to cover the railroad industry. This is clear from the reference in the Act to the work defined as that of a "subordinate official" in the orders of the Interstate Commerce Commisson. The Interstate Commerce Commission has no jurisdiction to define the work of employees or officials in the airline industry. The criterion generally used by

the ICC is solely to define work in relation to railroad duties. It has no application to the airline industry and the Act should be amended to exclude all airline management personnel, including all levels of supervision, from its coverage.

SECONDARY BOYCOTTS

H.R. 9989 would also apply the existing national policy of prohibiting secondary boycotts to the railroad and airline industries. The Railway Labor Act contains no ban against secondary boycotts, a tactic whereby a union having a dispute with one employer seeks to coerce other employers not involved to stop doing business with the primary employer, i.e., the one actually involved in the labor dispute.

Secondary boycotts serve to expand the economic warfare involved in a labor dispute after the procedures of the Railway Labor Act may have been exhausted. Carriers and other employers having no direct involvement in a labor dispute should not be coerced for the purpose of forcing them to stop doing business with a carrier having a primary labor dispute. The unfairness of secondary boycotts has long been recognized by Congress through the Labor-Management Relations Act which outlaws them.

The national policy against secondary boycotts should be extended to the airline and railroad industries. Not only because of the inherent unfairness of such boycotts, but because their effect is counter to one of the basic purposes of the Railway Labor Act, to wit, the avoidance of the interruption of commerce as a result of labor disputes. Use of the secondary boycott can seriously disrupt the service of neutral carriers.

Secondary boycotts coerce neutral employers to stop doing business with another employer and, as such, constitute an unwarranted restraint of trade. Any such restraint of trade is contrary to the public interest and should be eliminated. All of these changes would simply bring practices under the Railway Labor Act into conformity with those now existing in other industries.

ELIMINATION OF RATIFICATION VOTES

H.R. 9989 also would amend the Act to cover certain specific problems that have arisen since the passage of the Act. Representatives of both labor and management would be required to have full authority to enter into a final agreement when negotiations are conducted, thus eliminating the increasingly severe problem of collective bargaining settlements not being settlements at all because of the failure of the ratification process.

Labor contract negotiators selected as the representatives of a carrier's employees, as well as the carrier representatives in collective bargaining, should be empowered to consummate final and binding labor contracts without resort to ratification votes. The maintenance of stable labor relations and the avoidance of interruption to essential transportation are the primary purposes of the Railway Labor Act. The keystone upon which the Act stands is free collective bargaining in good faith between the carriers and the duly designated representatives of their employees. If conferences between representatives at the bargaining table are to be meaningful, then it is necessary to amend the Act so as to make it clear that the representatives who negotiate on behalf of the employees have the authority to conclude a binding, final agreement and are not mere intermediaries carrying proposals between the union membership and the company negotiators.

Ratification votes serve to undermine true negotiations and interfere with the timely making of agreements. As George Meany, President of the AFL–CIO, stated, "Now it is the union that comes to the bargaining table without the power to act. And this is bad bargaining. This is not the way to bargain." Concurring with Mr. Meany is the Air Line Pilots Association which, in the past, has strongly opposed ratification votes and has publicly asserted that union negotiators should have the authority to reach a final and binding agreement. A classical example of a ratification vote undermining the bargaining process, creating undue delay, and fomenting greater labor strife is the ratification vote in the 1966 dispute between the IAM and five airlines. In the dispute, the membership rejected an agreement concluded only after marathon negotiations in which the President of the United States personally intervened and brought intense pressure on the parties to reach an agreement; an agreement which all experts agreed was generous for all employees. After the President of the United States and the IAM leaders made a dramatic, nationwide, prime-time television apperance to announce a settlement of the contract and the strike that at the time

was 24 days old, the union membership defied the President and its own union leaders by rejecting the settlement three-to-one. The strike continued for an additional 19 days after rejection of the Presidentially mediated settlement.

Through the process of ratification votes, agreements are submitted for approval or rejection to individuals not familiar with the complex factors involved in reaching the agreement and who have little or no understanding of the bargaining process. The absurdity of ratification votes and their adverse effect on proper collective bargaining, for example, has been noted by the Air Line Pilots Association in its negotiators handbook. The handbook states, ". . . It is unreasonable to expect a pilot group to learn, absorb, and evaluate in detail all the complexities of a typical pilot agreement. The answer would seem to be a more thorough appreciation of the importance of selection, background, education, and collective bargaining experience of pilot representatives and closer coordination between those representatives. We therefore subscribe very strongly to the theory of present policy which is consistent with the requirements of the Railway Labor Act that, for collective bargaining to be effective, each party to the negotiation should come to the bargaining table with authority to act for their respective group."

The requirement for ratification by the union membership not only undermines the authority of union negotiating committees—it affects the strategy and tactics employed at the bargaining table, and even the bargaining priorities. At times, both labor and management are impelled to insist on or accept proposals which, although they are of minimal value in relation to issues discussed, have high emotional value. In effect, ratification votes require the company to bargain with the entire membership, rather than the duly designated representatives of its employees.

TENURE OF NMB MEMBERS

Finally, H.R. 9989 would increase the term of office for NMB Members from three to five years. The Congress of the United States has recognized the public interest in uninterrupted interstate commerce by providing in the Railway Labor Act special legislation for the railroad and airline industries. As is well known, the collective bargaining contracts in these industries are extremely complicated and involve unique problems. The fact that the airlines and railroads are considered vested with a public interest and subject to special regulations through, in the case of the airlines, the Civil Aeronautics Board and the Federal Aviation Administration, further increases the difficulties in these industries in arriving at settlements through the processes specified in the Railway Labor Act.

The unique quality of railroad and airline labor relations requires of the National Mediation Board a familiarity with transportation labor relations that is not obtainable in other industries. Board members need the experience which comes only from participating in the mediation of several rounds of negotiations with the major crafts in the railroad and airline industries. This invaluable and unique experience can hardly be gained within a single three-year term as at present for the members of the National Mediation Board. Additionally, the fact that the Board is an extremely small agency with little staff to provide continuity in the event of the replacement of a Board member further indicates the need for extending the term of office of the Board members.

Continuity in the office, additionally, will provide opportunity for Board members to give guidance based upon first-hand knowledge and experience to the parties in those serious labor disputes which involve transportation services essential to the nation.

Accordingly, the air transport industry believes that extending the term of office of the Board members from three years to at least five years would be beneficial in the administration of the Railway Labor Act. Additionally, it would be in keeping with the terms of the members of other agencies, such as the National Labor Relations Board, whose members have a five-year term, as do the Commissioners of the Federal Power Commission and the Equal Employment Opportunity Commission; the six-year terms of the Civil Aeronautics Board; and the seven-year terms of the Federal Communications Commission and the Federal Trade Commission.

AMENDMENTS RELATING SOLELY TO THE RAILROAD INDUSTRY

There are two other matters of importance covered by H.R. 9989 which relate to the railroad industry alone. These are abolition of the National Railroad Adjustment Board and the elimination of the payment of railroad unemploy-

ment benefits to strikers. The spokesman for the railroad industry can more appropriately discuss these matters. However, we do strongly endorse these proposals and give our full support to their enactment.

Mr. JARMAN. Thank you, Mr. Tipton. You have given us a comprehensive presentation of the major problems facing the airline industry, along with your comments and recommendations on proposed legislation dealing with the labor disputes problem.

Let me ask for clarification of the record, on page 18 of your statement, in referring to H.R. 9989, you refer to the three Cabinet members reviewing all unresolved disputes in the airline and railroad industries. At what point would the decision be made that it was an unresolved dispute?

Mr. TIPTON. That determination would be made by the National Mediation Board, which had up to that time presided over the dispute in mediation. At a point when the Board determined that it was unresolved and should be referred to the three Cabinet Secretaries, they would do so.

Mr. JARMAN. Also, simply for clarification, on page 19, you state: "A third procedure would be the appointment of a panel to decide which of the parties' final offers is the more reasonable and should be the contract put into effect." Other legislative proposals being considered by the subcommittee, as you know, deal with plural offers under H.R. 9989. Would it provide for more than one offer by each side? What is the "final offers" provision of the bill?

Mr. TIPTON. May I ask Mr. Goulard to respond to that question?

Mr. GOULARD. Mr. Jarman, there is one essential difference, I think, and I think an important one, between our proposal in this regard and the others. And that is that each of the parties present his final offer. And unlike other proposals, these final offers are exchanged. So, in effect, you have got to look at the other parties' holecard. At that point, either party has the option of submitting an additional offer, not a substitute offer but an additional offer in the light of the knowledge of what the other party has proposed.

I think that is unique. And there is a good reason for it.

We think this makes it less of a poker game, really.

Mr. JARMAN. It would be an option that each party would have, after seeing the so-called final offer of the other side.

Mr. GOULARD. That is right, sir.

Mr. JARMAN. Thank you.

Mr. Adams?

Mr. ADAMS. I am glad to see you here, Mr. Tipton, and I think your statement is excellent because it covers the whole economy as well as the labor problem. However, I am greatly concerned about your testimony, because it appears to me to say that you don't believe we should continue with collective bargaining in the airline industry, that it is simply something that cannot work. Now, since the Government, through the CAB, controls fares and there are more exemptions, and it is an absolute fare control in the area; if we were to use compulsory arbitration, wouldn't the Government, in effect, have taken over a major portion of running the airline industry?

Mr. TIPTON. Based on the terms of this bill, I don't think that the fears you have expressed, Mr. Adams, are justified, first, on your opening premise, which was that our bill was based on an assumption that collective bargaining should no longer be——

Mr. ADAMS. It is not the bill, it is your testimony. On page 1, page 7, and in the conclusion, you indicate that economically, you just simply cannot continue with wages increasing the way they are, then followed by increases in prices to consumers, which is a continuing process. And this is going to lead up to my later question about how we maybe should divide this thing. This just appears to me to be an economic problem. It seems to me you are saying in your statement that we really ought to take over and have wage and price controls in the airline industry. We might just as well do it. Now, whether we do it by fare control with the CAB, and compulsory arbitration on wages, or whether we just simply say, we are going to freeze wages and prices, don't we really arrive at the same point?

Mr. TIPTON. Based on the terms of this bill, I think that that is not right. Here is really what we are proposing. We are pointing out, in all of our review of the impact of wages on prices, that that, in our opinion, has resulted in an imbalance at the bargaining table, where the parties have not had equal stakes. And our bill is put forward not for the purpose of stopping collective bargaining, but for the purpose of improving it. And I have sought to emphasize as much as I could the uncertainties involved in the various procedures set up in our bill would increase the effort on the part of both parties to reach conclusions. And in our opinion, it would do much to restore the balance at the bargaining table, which would result in more reasonable wage settlements.

Mr. ADAMS. I have some deep experience with what you say. Collective bargaining is a brutal process. Some people bandy around collective bargaining as though it were a panacea or a bed of roses, and it is not really that at all, it is an economic challenge between two groups, but in this Member's opinion it has worked in the airline industry.

Now, the question that you seem to be putting to this committee is that in working it is having a bad effect on the Nation because, you see, we have had a series of airline strikes since I have sat on this committee, since 1966. We have, one, never had a national emergency; and, two, we have never legislated an airlines strike; and, three, they have always been settled. So far as labor legislation in the area is concerned, collective bargaining has worked. It seems that what you are saying to us is that the effects of collective bargaining in the airline industry has been very bad from the viewpoint of the national interest. And I am thinking maybe that should be approached in a different way, either wage and price controls or changes in economic regulation, or something else.

Mr. TIPTON. In the sense that Congress has not, at least in recent years, had to deal with an airline dispute, or that the national health and safety has not been impaired by airline strikes, it could be said that collective bargaining has worked. But it hasn't really worked, because the public interest in collective bargaining goes beyond the making of an ultimate contract between the parties. The public interest goes to the portion of not only maintaining the continuity of transportation, but also in the maintenance of the service and the price which is charged. Our point here is that our bargaining situation for all the reasons I have stated, is so out of balance that the airlines have had to agree to settlements which go beyond what they should have

done, and thus have resulted in the type of increases in airline salaries and the type of airline prices that are shown on those charts. I guess our disagreement is, by what standards do we judge the effectiveness of collective bargaining.

Mr. ADAMS. You are saying the same thing, I think, that I am saying in another fashion. I know that I and other members of this committee were flooded during the Northwest Airlines strike with requests from both sides and from the general public, too, in some way, for God's sake, to get this settled. The unions were complaining about the mutual aid pact. I have made inquiries about the mutual aid pact, but my guess is that Northwest Airlines last year was the only one which benefited from it, but that is something that maybe all of us will never know. Last year, while everybody else's traffic was dropping, Northwest Airlines was shut down and would only run the runs that they wanted because they had the benefit of the mutual aid pact. There were complaints on the side of the union. And there were also complaints on the side of management, just as you have pointed out, that they were being whipsawed. But we are proposing—and in the railroad industry we have just gone through the idea of breaking down national bargaining in order to prevent a national emergency every time. Now, what you are suggesting is that we, in effect, should have national bargaining and get into the fact of having really a complete shutdown of all airlines, perhaps, at the same time. And so my question to you is, since you are coming at us from one direction, and the unions from another, should we have a divided bill with a difference in the treatment for airline problems as opposed to railroad problems, because of the basic difference in the two industries.

Mr. TIPTON. I would suggest that the problems of both industries as we have treated them in the same bill are the same. But I would leave that issue open for the committee to pass upon.

Mr. ADAMS. The reason I ask it is, you don't get to a national emergency, generally, with the striking of one or two airlines, because, as you point out very graphically and very well in your statement, there is a competitive traffic into nearly every city in the United States, and that it is highly competitive. Whereas the position we seem to get into with the railroad industry is that it is no longer competitive, so that you get an immediate national emergency effect, or you can, by even the striking of a few lines. So should your problems be treated differently than the railroad problems?

Mr. TIPTON. In preparing this bill, of course, we spent a great deal of time in comparing the problems of the two industries. In essence, the problems are the same. The very ones—and, of course, they will later testify and they know their business better than I do—but as a part of this process of working together, the characteristic difficulties in collective bargaining in the railroads and in the airlines, are the same. We are both service industries. When we shut down there is no income, and all of the characteristics of the industries which, in our opinion, provide this imbalance in bargaining are the same for each. And in designing this legislation, we ought to restore some balance in that bargaining. I think the remedies—surely the remedies we provide are not drastic remedies. But we have sought to try to improve this balance by introducing the factor of uncertainty.

I think that is as brief a statement as I can make of it. Because both

parties under the provisions of our bill will not know whether the Government is going to step in and say, the strike must stop. They will not know how the dispute is to be handled even if the Government does intervene. It will inspire both the labor negotiators and the management negotiators to reach a conclusion. The labor union will not know whether it is going to be permitted to strike. If it knows that it is going to be permitted to strike, then it can put its feet in cement, because it knows as well as anybody knows the drastic results of a strike on the airlines.

In view of your reference to Northwest, I should point out that the ill effects of the Northwest strike came after the strike, not during it. What that meant to Northwest Airlines was that the day they opened their doors after the strike they had no business. They had endless training to conduct. They had endless maintenance of aircraft to conduct. The result of that has been a loss for the first 6 months of this year by Northwest for the first time in many, many years. It has not gotten back to full operation yet. And it has unquestionably lost a large part of the traffic that it had locked up on many routes, that traffic had been lost, and Northwest's competitive position will have to be regained.

Mr. ADAMS. So you see there apparently is a fundamental difference that you have again between airlines and railroads. It is our understanding—maybe I am incorrect in this—that once the strike is over on the railroads, their basic problem is simply getting the freight moving again, they have no competition in significant areas of the country.

And I think this is probably reflected in wage rates. For example, the wage rate settlements between mechanics on the airlines, as you very well point out, and those on the railroads are significant. And these mechanics are often within the same unions or same international unions. So again I gather your position is that both transportation modes should remain within the same package.

Mr. TIPTON. I really think they should. And that was the purpose of our working together to examine our situation.

But your reference to lack of competition in the railroad business—may I express the hope that you withhold judgment on that until the railroad people testify, because it is my understanding that they are faced with heavy competitive operations, not only among themselves, but of course with the trucks. And when they have a strike they also—when they have a selective strike, so to speak, they also have to be concerned that they will lose their market.

Mr. ADAMS. This is the first time we have ever had one. So we can't judge all of its effects.

My final question—maybe your counsel would want to answer this—is, you have testified that you believe the Government can use a test of cost and efficiency of the transportation business as opposed to a test of national emergency; on what constitutional basis do you believe the Congress can establish a test of cost and efficiency of business for the purpose of either enjoining men from striking or of writing a compulsory settlement for a business? In other words, this is direct Government control of business and of men. Do you think we have that power just based on the fact of regulation of cost and efficiency of the transportation business?

Mr. TIPTON. Mr. Goulard.

Mr. GOULARD. I think, just simply, the answer to that is yes.

Mr. ADAMS. In other words, you would do it under the interstate and foreign commerce clause and not under the police power clause?

Mr. GOULARD. I would like to think more about this, but I would think there is such a power.

Mr. ADAMS. I have asked the others about it, and they say, yes, we do have a significant power in the regulation of interstate and foreign commerce. But, of course, that power is not as significant as the power to use in effect police power for the public welfare of the Nation in order to prevent a national emergency.

Mr. TIPTON. May I comment.

Mr. ADAMS. Please do.

Mr. TIPTON. The question, of course, is a fundamental one, and must be considered and answered.

It seems to me to be quite clear at this stage in our Nation's history that it is completely appropriate and constitutional under some circumstances—I will get to the circumstances in a minute—under some circumstances to interfere with the rights not only of management, but also the rights of labor. More and more we encounter, as I think we should, circumstances in which the exercise of rights, whatever they may be—my right to sell my house—my right to speak—my right to run an airline as I please—more and more we encounter the situation in which it is established that if the exercise of those rights does great public harm, then your right to do that can be restricted. And I believe that acting under the commerce power here the Congress can say to airlines, and can say to unions, that when it is found that too much public damage is going to result from your exercise of your right to strike or your right to operate, then reasonable steps can be taken to restrict that right. Considering the general invasions of the right—I guess the right to do as you please—considering the very extensive regulations imposed upon airlines—they can't charge what they like—they can't transfer their property to anyone they like—I won't go through the whole thing, because all you gentlemen know it, but those have been imposed by the Congress because of the unrestricted rights of businessmen, it was feared, would result in public harm, and consequently they restricted them. Now, in our bill we have laid down a most careful determination by the highest levels of government as to whether you should interefere with the right of the unions to strike or the right of a carrier to take a strike. Three Cabinet officers must consider the matter. They must determine on the basis of the total public interest as to whether a strike should be permitted, or whether a last offer process should be gone through, or whether binding arbitration should be chosen. Obviously there is a major question of policy presented to the Congress there, but I would say, not a great question of law.

Mr. ADAMS. The reason that there is a question of law, and why I asked your counsel, is, in the administration bill there is no trigger for when the Government moves. It is determined in effect by the President. As I gather from your bill, there is no legislative standard for when the three Secretaries move. Again, it is a matter of an ad hoc policy decision at that point. I am not at all certain that either of those triggers are valid, constitutionally—I think you may have to have

guidelines—but I think even absent that, that the Congress would not want to say, without any guidelines, you three Secretaries may act.

Now, there have been suggestions that a certain percentage of the business had to be out, or a certain period of time had to pass under which strikes had gone on, in other words, the policy decision of this committee would be, what would we write in as guidelines as a trigger.

Thank you, Mr. Chairman.

Mr. GOULARD. Mr. Adams, may I just add to what Mr. Tipton has said, that actually what we seek to legislate here, or seek to have you legislate, is an amendment to the statutory scheme of the Railway Labor Act. The Railway Labor Act as it now exists imposes restrictions on rights to strike. It grants collective bargaining rights to the unions, as did the Wagner Act. And so what we are doing here is not changing any principle, really, but modifying the occasion under which those rights may be exercised.

Mr. ADAMS. Would you use the Railway Labor Act's economic effect on a region of the United States, or the Taft-Hartley Act's national emergency trigger, or would you use either?

Mr. GOULARD. The trigger that we use as our standard, if you will, is a determination by the National Mediation Board that all attempts to settle the matter through collective bargaining have been exhausted. Then there is an automatic referral at that point to the three Cabinet members, who will have a panel determine and recommend to them whether there is sufficient public interest in the resolution of this dispute to demand further intervention by way of an emergency board, final and binding arbitration, or final offer selection. If it determines that this dispute will not have serious repercussions, then the determination of the panel and its recommendations to the three Secretaries would be, as Mr. Tipton's testimony has said, do nothing and let the parties have at it if they will.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Tipton, we certainly welcome you here today. And I too would like to compliment you on a very fine and a very comprehensive statement with regard to the problems facing the airline industry in this regard.

Mr. TIPTON. Thank you, sir.

Mr. HARVEY. I also share your statement that legislation in this field is absolutely necessary.

I think you know that I differ in some respects with regard to the approach that the airline industry takes in this matter. Otherwise I wouldn't have introduced a separate bill myself, of course.

I am bothered, however, by the fact that the airline bill makes so little reference to the strike as an alternative in this particular matter. It seems to me particularly, in view of the recent decision of the court, which has affected railroad negotiating tremendously, and in view of recent history here in Congress, with measures that have been said to constitute compulsory arbitration, that really, in looking at this problem, we do have to be very realistic about it. That was the starting point that I assumed in looking at the problem. And in my judgment I concluded that selective strikes in some form were going to be witnessed for some time to come. I may have been wrong in that conclusion.

But with that in mind I approached the problem that our best solution then was to, No. 1, try in some regard to limit those selective strikes or to restrict them, so that their damage was less harmful to the public, and direct it more right at management where it was originally intended.

And No. 2, to the extent possible, to prevent the type of whipsaw damage that you have so eloquently spelled out in your statement and which has been so peculiar to the airline industry in recent years.

With this in mind, I couldn't help but feel that where you stress the competition in your statement, on page 9 particularly, where you pointed out, that of the 400 top markets, 320 of them are reserved by two carriers, and 60 of them by three carriers, that in fact you argued very eloquently for some form of selective strike. Now, I know you would disagree with me in this regard, but I would ask you this question. If competition in the airline industry is so keen, as you have clearly spelled out that it is here, then how can we in Congress say that a strike to one of those particular airlines is such a danger to health and safety, or is such a national emergency, that we in Congress should take away that basic right to strike?

I will let you reflect on that for just a miuute, and point out to you that actually a strike in one of those airlines has considerable less effect, for example, either on the public—or particularly on the public as far as damage is concerned—and a strike, for example, in the auto industry that is peculiar to my State. In the case of the airlines, there are alternatives. There are the competitors right there that you mentioned, in at least the top 380 market, they all have at least two carriers, and some of them three.

With that in mind I would appreciate your answer to it.

Mr. TIPTON. I think that the answer to the several problems that are implicit in your question is this, that one of the issues that anyone considering this has to concern himself with is what public interests are involved here, what public interest is this legislation designed to safeguard? If the only public interest that concerns us here is the maintenance of transportation service, so that the public is served, then if that is the standard, if only one airline is struck on a competitive route, the public is not severely damaged. But we believe that there is a broader public interest that should be faced here as well. And your reference to the auto industry is a very good example. It doesn't hurt the public really to be denied a new automobile. You can keep driving your old one. What hurts the public, in the case of an auto strike, is not denial of new automobiles, but the terrible impact of unemployment and other more general economic influences produced by the shutdown of such a major employer.

Now, in the case of applying that same principle to the airline case, the public interest in an airline dispute might well not be in the maintenance of transportation service. It might be in runaway inflation, where wages go up so fast and so high, and in such patterns for other industries, that something must be done to improve the bargaining posture of management. That is an important public interest to take into account.

Mr. HARVEY. If I could interrupt you right there, I think that is true. But where I would disagree with you again is, I think that we here in Congress just have to be realistic also as to what sort of leg-

islation can conceivably pass Congress. And although we may wish to change the balance, as you suggested, as between the parties, I am not convinced in my own mind that compulsory arbitration is a realistic means of doing that. I would have to tell you that.

Let me, since my time is quite limited, get on to another area.

In your bill, as I look at it, of the four alternatives that you mentioned, really only the last two, No. 3 and No. 4—No. 3 is final offer selection in a little different form, and No. 4 is the compulsory arbitration—really only those two offer a final solution to the problem. Now, what would happen if, for example, the panel would recommend to the Secretaries that they take alternatives, No. 1, that they do nothing, and release the parties for an economic test of strength, and the solution was not reached?

Mr. TIPTON. Then you would have a so-called selective strike. You would have a strike—either that or, the parties having reached that point, they might in the process settle. But let us assume that they didn't, and then you would have a selective strike. That is the reference—actually the reference in our legislation to selective strikes. We say, let the parties, as Mr. Goulard said, have at it.

Mr. HARVEY. And the same is true with regard to alternative No. 2, that a board be created to determine the facts and make recommendations. Actually that is not a final solution either, is it?

Mr. TIPTON. No, as we have seen, the emergency board type of approach is not a final solution. Actually these various steps, we thought, were justified on two grounds. One, we didn't want to advocate, in the interest of realism, we didn't want to advocate such drastic remedies under these circumstances that everyone would turn their backs on the proposals.

Mr. HARVEY. Because they are not final solutions to the problem, can you truly tell us here that you think a President or his Secretaries would recommend either alternative No. 1 or alternative No. 2, and know that the consequences of that might be having to come back to Congress again?

Mr. TIPTON. If they knew that the strike was going to create some drastic damage that would have to come back to Congress, I think they would pick 3 or 4. On the other hand, I would expect, in the case of airline disputes and maybe quite a number of rail disputes, if they continue on this selective strike business, to have the Secretaries reach the conclusion that there isn't sufficient public damage to be done here, that the parties can go ahead and strike.

Mr. HARVEY. What criteria can you suggest to us here in Congress—I am not sure how I should phrase this—No. 1, if we were to permit a selective strike, what criteria can we set up, how can we measure and determine that it is such a strike that does not imperil the national health and safety? Now, we have done this in the railroad industry, and it is very easy to do, both the unions and management agree, by designating the number of carriers and by measuring out the percentage of revenue ton miles, or how it affects the load-carrying capacity. But if we were to define selective strikes for the airline industry, how could we define it, in your judgment?

Mr. TIPTON. I don't know.

Mr. HARVEY. Do you want to give some thought to that and submit it for the record later one?

Or maybe Mr. Goulard has a comment.

We would welcome, at any rate, in the future a letter from you, or your suggestion.

(The following letter was received for the record:)

AIR TRANSPORT ASSOCIATION,
Washington, D.C., December 8, 1971.

HON. JAMES HARVEY,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. HARVEY: During the hearing held before the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce regarding emergency labor dispute legislation August 4, 1971, you asked how we would define selective strikes for the airline industry. You indicated at that time that you would welcome a future letter in response to your question.

In the course of the hearings and the discussion of selective strikes, we failed to focus on the fact that the collective bargaining systems in the railroad industry and the airline industry are significantly different in that in the railroad industry there is nationwide multicarrier bargaining. In the airline industry there has been virtually no multi-carrier bargaining. Thus it is not possible to formulate a definition of selective strikes in the airline industry which would be comparable to that which you have developed for the railroad industry since selective strikes, in effect, do not exist in the airline industry. Accordingly, we believe that the selective strike provision in your legislation should apply only to the railroads.

In referring to selective strikes in the airline industry, it would be more appropriate to refer to whipsaw strikes. This term describes the process whereby a union plays off one carrier against another through the process of selecting for negotiation the economically weakest carrier first. It then uses that agreement as a base from which to obtain a higher settlement in the negotiation with the next carrier. This selective whipsaw strategy has a snowball effect in creating an ever-spiraling inflationary situation in airline settlements contrary to the public interest.

Under the airline proposal, the three Secretaries, or the panel appointed by them, would look at stalemated collective bargaining disputes and determine whether or not the public interest would be seriously injured by the outcome of their negotiatitons. The determination of possible public interest injury would be judged not only from the standpoint of national or regional health and safety, but also from the standpoint of the economy of the nation or a region thereof. If there should be such an adverse impact, then it would be incumbent upon the Secretaries to take the necessary available action to protect that public interest.

The opportunity you have provided to clarify this point is greatly appreciated.

Cordially,

S. G. TIPTON, *President.*

Mr. TIPTON. Let me check something. Mr. Goulard says that on page 4 of our testimony—you might comment on that.

Mr. GOULARD. Mr. Harvey, what Mr. Tipton is saying, I believe, on page 4 of the testimony is that you have a broader concept of what the public interest is.

Mr. HARVEY. You are saying, if I could interrupt there, that the definition you have in your bill—I just happen to have page 4 in front of me—would give the discretion to the panel and the Secretaries to make this decision. I recognize that. But my question is, based upon the premise, let me say, that that is not a sufficient criterion, organized labor wants to know definitely within what limits can they strike, within what limits can they feel free to exercise this basic right that they have, and how can we as Members of Congress spell out this right and get it into legislation for them.

Mr. GOULARD. As I was about to say preliminarily—and I think perhaps we could furnish more specific langauge—the test we would have

the panel use, the three panel members, would be this. Selective strikes would be permitted, and the parties would be permitted to reach their own solution unless national health and safety is imperiled in the sense in which you have been using it, No. 1, a region of the country would be affected substantially by the denial of service of the particular airline struck otherwise, or——

Mr. HARVEY. Really what you are saying, if I understand it, is very substantially the same as the provision that we have in the bill I introduced among many others, and that is, before the selective strike is permitted there should be some affirmative certification by the President or by the administration that the strike will not affect the national health and safety.

Mr. GOULARD. That is true in principle, except that our test is a much broader one, because we included the ultimate effect on the national economy by way of its effect on the inflationary spiral of a settlement by way of capitulation, or what have you, by that particular airline, be it a large or small airline. You are not limied to national health and safety in the sense in which you have been using it. We think that is a very real consideration, and we urge, because of our own weakness, and our own capitulations in the past—because this unfortunately hasn't been true collective bargaining—we urge that this broader concept be adopted.

Mr. HARVEY. Can I ask you another question very quickly here. In the bill that I introduced I had a provision which provided that after a settlement had been reached in a particular selective strike, that settlement had to be offered to the other carriers involved, and it was what we called an antiwhipsawing provision which would attempt to let's say, do away with some of the otherwise effect that could come about as the result of selective strikes. Now, would you care to comment on that?

Mr. TIPTON. Mr. Goulard.

Mr. GOULARD. Without reference to the other provisions of your bill, I would say that that provision in and of itself, after selective strikes, has a lot of merit. And I think it demands a lot of consideration. That is one of the things that has concerned us over the years, this whipsawing. And it would call for the establishment of a pattern by economic force, but nevertheless the establishment of a pattern, and then the prevention of subsequent whipsawing or escalation from that pattern. And for that reason I personally think it has a lot of merit.

Mr. HARVEY. Thank you.

Just one quick question for Mr. Tipton. In your statement you mentioned subsidy payments for regional airlines. And I perhaps should direct this question to somebody else. But can you tell me, are we making subsidy payments to regional airlines where there are competing lines on the same route?

Mr. TIPTON. Yes.

Mr. HARVEY. We are?

Mr. TIPTON. Yes.

Mr. HARVEY. Thank you.

Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Helstoski.

Mr. HELSTOSKI. Thank you, Mr. Chairman.

Mr. Tipton, can you establish some relationship between the fare increases and increases in labor costs as a result of strike settlements?

Mr. TIPTON. The increases in labor costs, as are stated—hold a minute until I get the details of them in the statement—noting at the top of page 14, where the figures on that chart are shown to be 3 percent up in 1966, and then 5 percent 1967, 8 percent 1968, 10 percent in 1969, and 15 percent in 1970, now, the percentage increases in fares have—looking at them overall—have been during this period approximately 9 percent. Now, during that period, of course, part of the time fares were still going down, they were going down in 1967 and 1968. And then in late 1968, 1969, they started to climb. So that their wage increases were absorbed during a very substantial part of that period.

Mr. HELSTOSKI. What you are saying, then, is that the primary and major reason for the fare increase is based on the increase in labor cost?

Mr. TIPTON. The primary reason we believe for the rate increases has been the increase in labor costs. As we have pointed out, if our labor cost increases had just followed the inflation rate during this period, we would have, I believe, the figure presented in the statement, it would have reduced our cost this year something like $600 million.

Mr. HELSTOSKI. On page 16, Mr. Tipton, you have a short informational item on short haul markets, one way coach fares. You begin with the Washington-New York run, $23.15 in 1971. If you took that figure back to 1967, the early part of 1967, that figure would have been $13 not $17, which is a 100-percent increase in the face cost. I have this question. How is it that an airline—this is a 200 mile run—how is it that an airline in an intrastate situation in California with a 300 mile run, could in today's fare market, produce such a run for $16 a person.

Mr. TIPTON. There are quite a number of reasons. One, the fact that that airline restricts its service entirely to a highly dense market of about 400 miles, and conducts little if any service, or no service, outside of California. Consequently it doesn't have the requirements for maintaining other service all over every place else. The service is dense, and thus you can maintain that at a fairly low figure. And I think that a further reason for that is the fact that it is an uncertificated carrier as far as the Federal Government is concerned, and certification brings with it not only additional service burdens, but also additional expense.

Mr. HELSTOSKI. It is no denser than the New York-Washington market.

Mr. TIPTON. No, it is no denser. But the point about the New York market is, for the carriers operating in the New York market, they also have to serve small towns all over their system, so that they have got some very dense markets of that kind, and also some very thin ones of the other. And the effort is to make them all balance out. The studies that have been made by the carriers and by the CAB on this subject—this is the point of the comment here—is that in these short haul markets you do have a higher degree of cost per unit of service than you do have in the longer hauls. Consequently, rate increases in those

areas have been greater percentagewise than they have been in the longer hauls.

Mr. HELSTOSKI. I don't understand that, Mr. Tipton. I am talking specifically about Washington-New York as the Eastern Airline shuttle service.

Mr. TIPTON. Yes.

Mr. HELSTOSKI. What I am pointing out is that there has been a 100-percent fare increase—and certainly this doesn't bear any relationship to the labor increases in that period of time—by the percentages that you give on page 14 of your testimony.

Mr. TIPTON. That is the point that I was trying to explain—I did a very poor job of trying to explain it.

In establishing rates for overall air transport operations the CAB determined some time ago that those rates, as they said, should be cost oriented, in other words, the differences in rates per mile should reflect the differences in costs per mile of the varying types of operations. The short hauls of this kind are the highest cost, because you have all of your passenger handling, all of your ticketing, all of everything else that goes into the total expenses for carrying a passenger fixed, no matter how many miles he goes. And they said, you must fix your charges on that basis. And that is what was done.

Now, in the longer haul market, say, of transcontinental, or a thousand-mile haul or something like that, you would find the rate increase involved here much less, and in transcontinental markets, very little.

So that this is scaled upward to the short haul markets. And that is the reason. You get the heavy impact on short hauls.

Mr. HELSTOSKI. As a matter of fact, this particular airline received a rate increase without appearing before CAB in the last instance, just an automatic increase in the fares, not withstanding the fact that they didn't appear before the CAB.

Mr. TIPTON. Under the ratemaking system laid down in the statute, the initiative is supposed to be on the carrier to decide what his rate shall be, and to file it. It is only in the cases where the board wants to object to that the board interferes, and you have a hearing. So I can't remember these changes of rates in the New York market in detail. But it would be fairly normal to be able to file a rate and have it go into effect without appearing before the board. That is the way it is supposed to work, as a matter of fact.

Mr. HELSTOSKI. If we were to take an index of 100, what part of 100 would increase in labor costs be, and what other increases would be involved that are reflected in the passenger fare increases?

Mr. TIPTON. Fifty percent of our total cash operating costs are labor costs. And this year that is rising about 15 percent. Our materials and supply costs are about 30 percent of total cost. They are going up at about 5 percent. And it is the combination—the disparity between the increase in labor costs and the increase in other costs that causes us to reach the conclusion that the increase in labor costs have had a major effect upon the need to increase fares.

Mr. HELSTOSKI. And the other 20 that remains would be advertising and the frills that are placed on the airlines?

Mr. TIPTON. The advertising, I think—our advertising is about 1½ percent of total revenues. Our food costs are a lesser percentage than that.

(The following letter was received for the record:)

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C., August 10, 1971.

Hon. HENRY HELSTOSKI,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN HELSTOSKI: To further clarify my answer to your question on airline passenger food and advertising expenses posed in labor legislation hearings of August 4, the following information should be helpful.

Passenger food expense of the twelve major airlines in calendar year 1970 amounted to $285 million, or 3.5% of total operating expense (3.9% of cash operating expense). Advertising expense was $180 million, or 3.2% of total operating expense (2.5% of cash operating expense).

Also, I might elaborate on my answer to your questions regarding recent fare increases and airline unit labor cost changes. From 1962 to 1970 the yield per passenger mile declined 8%. Unit labor cost during this time period increased 68%. In the three year period 1969–1971 there have been general domestic fare increases amounting to 16%. This is about equal to the 15.5% increase in unit labor cost experienced by the airline industry in 1970 over 1969. Thus unit labor cost increases in one year approximately equalled the fare increases granted over the last eight years.

Cordially,

S. G. TIPTON, *President.*

Mr. HELSTOSKI. How does that 1½ percent relate to that index of a hundred that we use arbitrarily?

Mr. TIPTON. It would be in the neighborhood of 1½ percent. Because I was trying to compare it—normally your advertising costs are presented in a percentage of passengers revenues. And I think that it is in the neighborhood of 1½ to 2 percent.

Just a second. We will check and get it right.

I am sorry I don't have the figures at my fingertips. But advertising is about 2 to 3 percent of cash operating cost, and food is about 3.

Mr. HELSTOSKI. Does that 1½ percent include a figure like an annual advertising expenditure by Pan American of $165 million, for example?

Mr. TIPTON. If Pan American spends that amount that would be reflected. It strikes me that that must be—it strikes me as being quite high. I will put in at this point the exact amount that Pan Am spends for advertising in a year.

Mr. GOULARD. It is not 25 percent.

Mr. TIPTON. Mr. Goulard, who was until recently vice president of Pan Am, says that it is not even 25 percent of that.

Mr. GOULARD. It is $34 million.

Mr. HELSTOSKI. The total dollar figure of advertising expenditure.

Mr. TIPTON. Yes.

Mr. HELSTOSKI. Do you think the airlines are sufficiently competitive, Mr. Tipton.

Mr. TIPTON. I would assuredly say that they are sufficiently competitive. The level of competition in this business comes close to violent on occasion. And that, as a matter of fact, is what results in what I would regard as pretty high advertising expense, pretty high food cost, and a variety of other characteristics of our business which undoubtedly raise this cost somewhat.

Mr. HELSTOSKI. The essential point, Mr. Tipton, is that it seems that you are placing the onus and responsibility for fare increases primarily on the labor market itself. And my point is that there are other areas that are equally as high, perhaps not in terms of percentages, but in terms of rising costs, that have the impact and result in the fare increases for passengers.

Mr. TIPTON. We have nothing that compares with the percentage rise in labor costs, nothing.

Mr. HELSTOSKI. I thank you.

That is all I have, Mr. Chairman.

Mr. JARMAN. Mr. Kuykendall.

Mr. KUYKENDALL. Mr. Tipton, it is good to have you here.

Mr. TIPTON. Thank you, sir.

Mr. KUYKENDALL. As one member of the committee, not only do I think you are competitive, I think you also are sometimes guilty of a little fratricide in the other direction.

Also as one who has spent most of my adult lifetime in the field of selling things, as everybody who ever attends this committee knows, certainly when you are in trouble is no time to stop trying to sell your product by cutting back on advertising. In fact, I have criticized some of the airlines for being a little too reluctant to sell their wares as strongly as they should. As one member of this committee I want to make very clear the way I feel about it.

I wish I could be as agreeable on some other points, on the possibility of selling some of the ideas that have been presented here this morning.

I deeply appreciate the very candid and straightforward set of facts and figures and some of your ideas. But very much in line with Mr. Harvey's statement, I am left almost cold with the possibility of being able to get our customers—and our customers here happen to be the Members of Congress—to buy some of our premise.

For instance, how do we differentiate, when we start casting out into this entirely new field of saying that the welfare of an industry becomes our business, instead of just the welfare of the people becoming our business? I know you well were aware when you wrote this proposal that we would be asked to cast into a new area, I am fully aware that you were aware of that at the time you suggested it.

But in that light, what would you suggest that we do in the area of the recent steel strike settlement as Members of Congress? And every one of us that read that the steel strike was settled said, thank goodness it is over. But the very next day we knew that after the price increase that both management and labor in steel—they are in the same ball park on this one—are going to be back in here on us in less than 6 months to control imports. So we sit back as Members of Congress and let the American steel industry—because we know it is not our mandate to get involved—price themselves out of the world market, and then we have their problems back in our lap as an inheritance. Now, where back in that chain of events should we get involved, if at all? It relates, doesn't it? Because we are talking about the overall industry. We know we are going to have the import problem in this Congress, we have already had it, and we are going to have it again. So I think in the way, other than the fact that CAB tells you that can't go up—they don't ever tell you when you can't go down—isn't it a related issue?

Mr. TIPTON. Yes. I think the issue we presented to the committee of rising labor costs, corresponding rising prices, and reduction of service, is obviously a problem, not solely related to the airlines and the railroads. It is a much broader problem. And I think we approach the question of Government intervention, shall we say, a little differ-

ently than many, because the Government intervened with the railroads in 1887, and the Government intervened with the airlines in 1938. And in our case, we are presenting here a very tiny step designed to redress the imbalance in bargaining so that we can keep down our labor costs a little better. We are not suggesting that labor costs be frozen. We would have some reason for suggesting that, in view of the fact that our prices and our profits are regulated by the Government, but we are not recommending that. In the case of other industries, I think the Congress is not interested particularly in the survival of a particular company as a company, they are interested in the impact of the lack of survival on employment and on employees and on the public generally.

Mr. KUYKENDALL. Let's explore something right here. Obviously either through CAB's unwillingness or your unwillingness—and I gather probably it is your own reluctance—you haven't been willing to impose high enough fares on the flying public to return the minimum satisfactory 5 or 6 percent on invested capital. Now, I just wonder if we had such a daring approach here as to legislatively charge the CAB with the responsibility for high enough fares across the board on everything to give you a 6 percent return. I wonder if you would be here if that were true?

Mr. TIPTON. I haven't the slightest doubt but that if that proposal were made, we would very quickly be here.

Mr. KUYKENDALL. To oppose it?

Mr. TIPTON. Opposing it.

Mr. KUYKENDALL. I hope you would.

Mr. TIPTON. Because it is a nice question of judgment, of course. And the individual airlines have to make it. At this present moment every airline needs all the money they can get. But they have not proposed increases that would actually yield them their appropriate rate of return, which is actually 12 percent, as determined by the CAB. They have not asked that. And the reason they haven't asked it is because they must be sure that they don't increase their prices so much that the public doesn't use the service. Now, no one knows, including the CAB and the airlines' best marketers and economists, what that level is.

Mr. KUYKENDALL. I wasn't suggesting 6 percent, I just thought that you would be glad to settle for that next year.

Mr. TIPTON. We would settle for it next year. But you have to have this nice balance, and you have to strive toward it, you never hit it, you have to have this nice balance between fares and growth.

Mr. KUYKENDALL. Let me change direction here for a couple of minutes for the sake of the record. I think it is something that we should get in the record. And that is the relative overhead per passenger-mile on so-called commuter hops as compared to long hops. Now, let me ask you, if I am fairly close in a ballpark figure, three round trips to New York would be all an airline with a crew could take in one daylight day, wouldn't it? Would that be about right, about three round trips?

Mr. TIPTON. It could be four. Let's assume that that is it—I can't testify that that is right, but let's assume that it is.

Mr. KUYKENDALL. Four round trips. Now, that three round trips—the reason I like to use the—three round trips is about equivalent, three

full round trips is equivalent to one way to Dallas. Now, you can easily make a round trip to Dallas in a day, very easily, can't you?

Mr. TIPTON. Yes.

Mr. KUYKENDALL. So a round trip to Dallas is equivalent to about—in distance—about six round trips, five and a half to six, to New York. Now, your down time on your round trip to Dallas would be the turn-around time in Dallas, which is what, about an hour and a half?

Mr. TIPTON. Yes, it should be that.

Mr. KUYKENDALL. Now, your down time on four or five round trips to Washington is probably five times that much, isn't it?

Mr. TIPTON. Yes, it should be five times that much.

Mr. KUYKENDALL. This is one of the things that totally relate to this vast difference that CAB is now requiring, right, that you should in some way reflect?

Mr. TIPTON. Now you have these operations conducted also in the most congested areas of the country. So you have built in loss of delay, and you have lots of lost airplane time.

Mr. KUYKENDALL. I think it is important that this be in the record.

Now, to go back to the question at hand. The final-offer selection, has already received my support. Let me say that I want to commit you on a little bit of an addition to what is offered in the Harvey bill on the final-offer selection. I kind of like the idea of letting the parties see each other's final offer about 5 days before the final date to give them a chance to settle on their own. I don't think I would give them a chance to make another offer to a board, but I would let them see it and try to settle it between themselves before they know who is going to be selected. I don't think I would let them make another offer, but I think I would expand on the Harvey approach a little bit, about 5 days before the final date let them see each other's final offer, and you would perhaps get a settlement at that time.

Mr. Tipton, do you have lockout authority?

Mr. TIPTON. I am going to ask Mr. Goulard to answer that. It is a fairly complex legal question.

Would you answer that?

Mr. GOULARD. It is fairly complex, and you think unsettled, but in general I would assert that we do.

Mr. KUYKENDALL. Now, here is something that you in the industry are going to have to answer for in the process of us writing this legislation. Without coming to Congress, without any national emergency situations at all, in other words, without any more coercion than exists in your system, you said yes, and signed your name to all these increases. As much as we hate it, maybe you would have been better off to have been back in here a couple of times. Maybe you ought to have gotten your backbone up and been mean and stubborn and said, to heck with the public interest and to heck with the flying public, let's get some blood on this one. Maybe you should have done that. What do you think?

Mr. TIPTON. The airlines have taken some very extensive strikes. Northwest just finished one in December which had gone on for 6 months, with the rather tragic consequences that I described. Our difficulty is not an unwillingness to take a strike. It is the great variation in abilities and willingness to take a strike. So that a pattern can be set that even the carrier willing to take a strike can't meet it. Ac-

tually in Northwest that strike, when that strike was called, they had a 42 percent increase over 3 years laying on the table.

Mr. KUYKENDALL. What about the mutual aid practice on strike funds within the industry? To what extent does that help a carrier like Northwest?

Mr. TIPTON. It helps a great deal.

Mr. KUYKENDALL. Doesn't that give you somewhat of a compensating power to compensate the power of the union in the whipsaw thing?

Mr. TIPTON. What that does is keep the struck airline from being knocked out of business completely. Now, it doesn't solve the problem by any means, and it doesn't keep him from being terribly hurt in the process, because as in at least two major areas—the mutual aid agreement doesn't help him pay his interest expense, which industrywide is a million dollars a day now. And second—and this is really more important—it doesn't help him start up again. When the strike is over, he has in effect nothing. He calls employees back, he cranks up the airplanes to go, and all his traffic has disappeared. As you know, much of the traffic on the airlines is reserved in advance. And he doesn't have any reservations. And the customers have gotten accustomed to using other airlines, and he somehow has to persuade them back.

Mr. KUYKENDALL. Let me be devil's advocate here on a slightly different question.

I will wind up in about a minute, Mr. Chairman.

The three Cabinet officers—and this might be the greatest deterrent to getting Cabinet officers to serve that we ever had because they are going to be in the lion's den when that happens, if we should ever go a route like this, which I doubt if we can—the three Cabinet officers determine that not only the health and welfare of the country is involved, or a section of the country, but that the industry is also involved. Shades of Charlie Wilson's "What is good for General Motors is good for the country" statement, which might get that thrown back in our faces if this comes up. They say that the economic impact of this strike would be so great on this section of the industry that we cannot allow it to happen. Aren't we saying in so many words—now, everyone accepts—you have clearly stated your opinion that you have to balance the procedure to where it is equally fair, and should I say, the final amount equally desirable to both sides—but by making this statement, haven't you told the unions that the economic clout that they expect to use as their side of this picture has to be taken away from you in order to save the country?

Mr. TIPTON. I think that the issue that these three Secretaries are going to be dealing with is not the welfare or the well being of an industry, what they are going to be dealing with is the impact on the public in a variety of different ways, rather than any concern for a particular company. I think that is important.

Mr. KUYKENDALL. You are differentiating now between a company and an industry?

Mr. TIPTON. No——

Mr. KUYKENDALL. I think you should. The industry is our concern, an individual company should not be so much our concern.

Mr. TIPTON. But your concern for the industry is not for the industry as such, but the impact of its failure on the public or the United States.

That is the line of distinction I am trying to draw. And in passing upon this question, they would take into account a very broad range of public interest. One of the things I haven't dwelled on is one that is terribly important. And that is our position in the international trade, and the balance of payments, because these strikes have in the past and will again occur, or we expect them to occur on our international operations. I think we are hitting here on what seems to be the major difference in approach between the airline-railroad bill and other bills, and that is that we are recommending strongly that a broader public interest be taken into account rather than the national health and safety.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. JARMAN. Gentlemen, we very much appreciate your being with us to make the record on this very important subject.

Mr. TIPTON. Thank you very much, Mr. Chairman and members of the committee, for being so patient with us.

Mr. JARMAN. The subcommittee will stand adjourned.

(Whereupon, at 12:10 p.m., the subcommittee adjourned, subject to the call of the Chair.)

SETTLEMENT OF LABOR-MANAGEMENT DISPUTES IN TRANSPORTATION

TUESDAY, SEPTEMBER 14, 1971

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. John D. Dingell, presiding (Hon. John Jarman, chairman).

Mr. DINGELL. The subcommittee will come to order.

This is a continuation of the scrutinies of the Subcommittee on Transportation and Aeronautics of legislation and methods for the settlement of transportation labor disputes.

Our first witness is Mr. Ralph W. Kittle, vice president, International Paper, Co., appearing on behalf of the Forest Industries Council.

Mr. Kittle, we are certainly pleased to welcome you before the committee. We are delighted to have you before us for any statement you choose to give.

STATEMENT OF RALPH W. KITTLE ON BEHALF OF FOREST INDUSTRIES COUNCIL

Mr. KITTLE. Thank you, Mr. Dingell, and other members of the distinguished subcommittee. Thank you for giving us the opportunity to make this statement.

In the interest of the committee's time, I shall omit parts of my written statement, but may I ask that the complete statement be printed for the record?

Mr. DINGELL. Without objection, your complete statement will appear in the record following your oral presentation.

We are more than happy to hear such other comments you choose to give.

Mr. KITTLE. My name is Ralph Kittle. I am vice president, corporate affairs, for International Paper Co. I have been with International Paper Co. since 1954 in various positions including corporation vice president of industrial and labor relations. Previously, I have practiced labor law in New York City. I have served in Government as counsel to the U.S. Senate Labor Committee, as a consultant to U.S. Labor Department, and in various other capacities. And previous to that I had a farm, and a warehouse on a railroad, in Ringgold, Ga.

I am testifying today for the Forest Industries Council, a policy coordinating body composed of national organizations with interests

in the growing, processing, and marketing of wood and wood fiber products.

On the inside of the front page of our statement you will find a more detailed description of the Forest Industries Council.

The selective disruption of rail service which imposed severe hardships on all citizens of the United States in late July was concluded on Monday, August 2. Long before this date our industry had arrived at a policy position for improving transportation labor legislation. On August 5, the Forest Industries Council published and distributed a position paper with respect to its determination to face the national transportation issue and seek solutions. I ask that a copy of that paper be inserted in the record. I hold it here and ask it be inserted at the end of my statement.

Mr. DINGELL. Without objection, it is so ordered.

(See "Facing the National Transportation Issue," p. 362, this hearing.)

Mr. KITTLE. It states in part:

The forest products industry intends to testify in support of legislation which will require both transportation workers and transportation management to keep freight systems operating without interruption in the national interest.

It is my purpose today to offer our industry observations on the gravity of continued threats to the orderly conduct of the Nation's business as a consequence of transportation disputes. We seek congressional assistance which will require both transportation, labor, and management to face up to their respective responsibilities to the national interest.

It is our judgment that transportation strikes have imposed irreparable losses on the entire Nation and that any approach to a solution of this recurring problem must take into account the national future, rather than the tragedies of the past.

Our industry is not here to indict either labor or management for damages suffered in the recent rail strike controversy. If blame for past errors is to be assigned, it must, in our judgment, be shared in varying degrees by transportation management, transportation labor, Federal agencies, the Congress, and the public at large. Together these elements have imposed both statutory and traditional restraints upon the abilities and even the willingness of transportation labor and management to resolve their legitimate differences.

The objective of our statement is to:

One, show the costly and wasteful effects of transportation strikes on the forest industries and on the Nation.

Two, indicate the tragic economic conditions of the transportation companies which point toward nationalization of these vital services.

Three, propose congressional action to improve the Railway Labor Act and to provide machinery for the final settlement of labor disputes in transportation services, especially with respect to those over which this committee has jurisdiction.

Before you now are legislative proposals to provide means to handle work stoppages on the railroads and other transportation services. Our industry believes that no more important issues than these vital proposals will come before you this session.

That is why we are here today—to impress upon you the firm belief of the forest products industry that for the future of our Nation and

its economy the labor laws affecting the transportation industry must be completely overhauled.

Now I go to the top of page 5, second paragraph.

If our internal transportation chokes or atrophies, the rest of industry and the Nation's commerce atrophy with it.

In no case is this more true than for the forest products industry. From raw material to finished product we must move almost 80 percent of our products by rail. Our raw materials and many of our finished products are bulky. They are not easily shifted to highways or waterways, and certainly not to air.

The possibilities of alternative transportation are small indeed. Water transportation on inland waterways is limited to the watercourses themselves. Intercoastal transportation is prohibited by the strictures of the Jones Act.

A switch to highway transportation, aside from its present economic barriers, would impose a massive burden upon the Nation's highways, whose cost would far outweigh the cost of modernizing rail service.

I say "modernizing" because deterioration of rail service in the continental United States is basic to many of the problems of the forest industry. Keep in mind that ours is an industry that operates in every region and every State. We tend to locate our manufacturing facilities near our raw material—South, West, East, and North—and to ship our products to population centers. We need freight service from all regions in all directions.

The combination of Federal regulation, archaic labor rules, loss of earnings, lack of investment in new equipment, general lack of innovation for whatever reason, take a heavy toll on railroad progress and productivity, and on our industry as well. Top this off with railroad and other transportation strikes and the attendant inability to move our products, and you can see the predicament in which we find ourselves.

No matter how well managed, how efficient and productive the labor force in a forest product plant, to the consumer we are no more efficient and economical than the transportation that delivers or fails to deliver our product, and yet over that we have no control.

The inadequacy of the Railway Labor Act is borne out by the fact that Congress has had to act seven times in the last 8 years to settle disputes that went through the procedures of the old 1926 act but came out with no solution.

We believe that above all, this legislation written 45 years ago must be updated to provide settlement of disputes without interruption of essential transportation service.

If this is not done, we face in the future further repetitions of the costly and crippling strike through which we all suffered in July and early August. The transportation crisis is not over. The Nation faces the prospect of a similar strike against the railroads within a few weeks, and others are pending.

Let us remember the impact of the July–August transportation dislocation, direct and indirect, on our economic, social, political, and environmental spheres.

Now, the next part of my statement deals with the effect of the strike on various industries, but I am sure you are familiar with most of this so I will turn to the second paragraph on page 8.

The strike had an adverse domino effect in the paper products industry. When the trains stopped running, converting plants, pulp mills, packaging plants, and other paper-based facilities were severely affected.

For instance, the imminent closing of just the California operation of one major company would have put some 500 people out of work at a loss of $50,000 per day to the company. Had the strike continued, it could have resulted in losses of $100,000 a day with 3,000 jobs affected.

Another company faced shutdowns of plants in five States involving several thousands of people.

Crop losses due to the strike resulted in severe reductions in orders for boxes and linerboard and created related unemployment.

As for lumber and wood products, five lumber companies in Oregon were shut down by July 23. By July 30, it was reported that Oregon forest products firms had lost sales valued at $36.1 million, and it was predicted that 150,000 workers would be laid off if the strikes continued much longer. The American Plywood Association said 3,000 were idled in that industry. And Georgia's pulpwood industry was described as losing millions of dollars. Of course, forest products firms in other States were affected similarly.

Valuable wood chips, used in producing paper and particleboard, were piled up to overflowing at many plants where storage capacity had been exhausted due to the effects of the twin work stoppages on the rails and at west coast ports, where longshoremen had walked out. Wood chips were reported burned at seven locations in Idaho, Washington, and Oregon.

The effect of the selective strike system applied in the rail controversy was nationwide, even though only certain roads were struck. Even the railroads which continued to operate suffered a decline in business.

Tragically, the impact of transportation strikes is not limited to the period of shutdown. Shippers and receivers must spend millions of dollars beginning to prepare in advance to deal with the effect of any disruption. And there are residual problems which take months and millions of dollars to overcome.

Delays in moving lumber and plywood, essential materials in homebuilding, create shortages and dislocations spurring higher costs to homebuyers. Strike-caused losses to wage earners, shareholders in companies affected, and local communities where the bulk of the dollars earned are spent, harm ultimately the Treasury of the United States which receives taxes based on national economic activity.

One thing the recent strike proved above all. That is that the Railway Labor Act is not adequate to meet current situations. The strike showed conclusively that the greatest economic burden of the blow is not on the rail workers, nor the railroad companies, but on the shipper and the consumer. The damage to these innocent victims is many. many times that of the parties concerned.

We respectfully submit that the Government must act to protect the rights and the economic welfare of the innocent parties—the shippers and consumers—by providing a system to arrive at final settlement of transportation labor disputes without shutdown of facilities so essential to the welfare of the general public.

A selective strike, which the courts have now ruled permissible, can be as devastating to many segments of the economy as a full, national strike. In effect, there is no such thing as a true "selective" strike, in our opinion, even if the walkout is limited to one or two railroads. In reality, all the railroads of the Nation are linked. They are part of one national network on which traffic and goods are moved from one railroad to another, even though segments of the network are owned and controlled by different companies.

The crux of the matter is that the railroad industry is unique. As a highly regulated industry with obsolete labor laws and labor agreements, it lacks effective free collective bargaining. Therefore, unique procedures in handling labor disputes must be applied.

It is obvious that our vital transportation industry—the arteries and veins that provide the lifeblood for the Nation's economy—is in a sorry state. The railroads and airlines have been sapped of their vitality, largely, we believe, by archaic regulations and union requirements. Several leading railroads are, as you know, in bankruptcy, and a number of others are on the brink of financial collapse. You have heard from the Air Transport Association that the Nation's airlines are in serious financial difficulty. Most of our airlines operated last year with large deficits. I understand in the area of $200 million, and are expected to operate at about the same area of deficit this year.

While these transportation industries are expected to serve our Nation's needs and to respond in our economy as private enterprise, they are so restricted by Government regulation and so choked by union requirements that they no longer can survive unless Congress provides relief by permitting commonsense and fairness to be applied to those vital services.

The dark specter of nationalization of our private railway and airline systems could be imminent if you fail to overhaul the obsolete railway labor laws.

Careful investigation should be made of the rights, obligations, and opportunities for improvement of labor-management relations under the Railway Labor Act.

(a) Many of us have long assumed that a strike has as serious impact on employees as it does on the employer. Traditionally, we have thought that when a union goes on strike its members are cut off as completely from income as is the company whose production has ceased. Also, we have assumed that the right of a company to lockout—which means simply the closing down of a facility or operation—equates with the right of a union to strike. The evolution of labor-management relations has made these original assumptions no longer valid. Modernization of the Railway Labor Act will require a reappraisal of the relative bargaining positions and options available to both labor and management.

(b) Whipsaw and selective strikes, particularly in an interlocking transportation industry, can be oppressive weapons. The lockout by management can be self-destructive. Should not the rules for labor-management relations protect the public interest from such practices by either party?

(c) Lack of authority to union negotiators to make binding agreements on behalf of the members they represent often has led to settlements at the bargaining table only to be followed by rejection on a

ratification vote. This seriously hampers the collective bargaining process by making the employer extremely reluctant to put out his best offer because he might doubt the bona fides of an acceptance which can be so easily rejected. Is it not appropriate to require negotiators on both sides of the bargaining table to have authority to make binding settlements?

(d) Railroads and airlines are now uniquely required to finance strikes against themselves, in effect, because the Railroad Unemployment Insurance Act provides unemployment pay for employees while they are out on strike, and this obviously does not encourage collective bargaining. Should these transportation industries be treated differently than other industries in this respect?

(e) Secondary boycotts and other pressures imposed on third parties and the public to cease doing business with a struck employer are awesome weapons. Taft-Hartley has certain prohibitions against them, but the public can be seriously damaged by rights to resort to secondary boycotts under the Railway Labor Act. Should not they now be prohibited?

(f) Management needs the loyalty of all its employees, certainly the individual loyalty of its supervisors. The Railway Labor Act permits "subordinate officials" to belong to unions just as do the employees they supervise. This could, and undoubtedly does, interfere with supervision and discipline, and therefore, weakens the employer in administering and enforcing the labor agreement. In this age when the concept of "conflict of interest" is so clearly enunciated in public affairs, is it not paradoxical that "conflict of interest" is protected by statute in the Railway Labor Act?

(g) A basic right of employees has been understood to be the right to jointly decide to join or not belong to a union. We understand that this and other basic representation procedures long provided by the Labor-Management Relations Act are not contained in the Railway Labor Act. Why should not parties under the Railway Labor Act have the same rights as afforded all other industries?

(h) Undoubtedly, the most important factor in the balance between railroad unions and management in collective bargaining has been the tendency of Congress, when collective bargaining has failed and emergency strikes have resulted, to enact high wage settlements, often without requiring more efficient work rules and practices. This practice by Congress has hampered bargaining, the give and take, which is ordinarily assumed and expected. Is not this practice one cause of the breakdown in collective bargaining under the Railway Labor Act?

(i) Also, is it not the responsibility of the Congress, in the present circumstances, to fortify the provisions of the Railway Labor Act intended to encourage labor stability and to provide the means to resolve labor issues, by now encouraging labor-management collaboration for improved productivity?

(j) Finally, and most important, since our Nation as a whole, and certainly the forest products industry, cannot afford the continued strikes on our railroads, we ask you to provide the following emergency strike provisions. These are general suggestions, and we don't go into detail. After the usual negotiation and mediation provided under the Railway Labor Act has failed: the dispute should then be referred to a panel established by the Secretaries of Labor, Commerce, and

Transportation for investigation after which the panel would recommend to the three Cabinet officers one of the following courses of action.

(1) Do nothing, if a strike would not sufficiently affect the public interest or if it is determined that the parties should be left to their own devices.

(2) That a board be directed to select between the last best offers of either party as a binding settlement.

(3) That a board be directed to make a binding settlement.

I must emphatically state that we are strongly against Government-imposed settlements in industries where free collective bargaining exists. Therefore, we would oppose the spreading of such intervention to other industries. But, since all other remedies appear to have failed for the railroads, we believe that final offer selection and the binding settlement approach should at least be tried.

It is our earnest hope that this testimony will assist this distinguished committee to pioneer in national transportation progress. The statutes emerging from your deliberations may well mark the turning point of national economic and social development.

(Mr. Kittle's prepared statement and attachment follow:)

STATEMENT OF RALPH W. KITTLE ON BEHALF OF THE FOREST INDUSTRIES COUNCIL

Mr. Chairman and members of the subcommittee: My name is Ralph Kittle. I am Vice President, Corporate Affairs, for International Paper Company. I have been with International Paper Company since 1954 in various positions including Corporate Vice President of Industrial and Labor Relations. Previously, I have practiced labor law in New York City. I have served in government as Counsel to the U.S. Senate Labor Committe, as a Consultant to U.S. Labor Department and in various other capacities. And previous to that I had a farm, and a warehouse on a railroad, in Ringgold, Georgia.

I am testifying today for the Forest Industries Council, a policy coordinating body composed of national organizations with interests in the growing, processing and marketing of wood and wood fiber products.

The selective disruption of rail service which imposed severe hardships on all citizens of the United States in late July was concluded on Monday, August 2. Long before this date our industry had arrived at a policy position for improving transportation labor legislation. On August 5 the Forest Industries Council published and distributed a position paper with respect to its determination to face the national transportation issue and seek solutions. I ask that a copy of that paper be inserted in the Record. It states in part, "The forest products industry intends to testify in support of legislation which will require both transportation workers and transportation management to keep freight systems operating without interruption in the national interest."

It is my purpose today to offer our industry observations on the gravity of continued threats to the orderly conduct of the nation's business as a consequence of transportation disputes. We seek Congressional assistance which will require both transportation labor and management to face up to their respective responsibilities to the national interest.

It is our judgment that transportation strikes have imposed irreparable losses on the entire nation and that any approach to a solution of this recurring problem must take into account the national future rather than the tragedies of the past.

Our industry is not here to indict either labor or management for damages suffered in the recent rail strike controversy. If blame for past errors is to be assigned, it must, in our judgment, be share in varying degrees by transportation management, transportation labor Federal agencies, the Congress and the public at large. Together these elements have imposed both statutory and traditional restraints upon the abilities and even the willingness of transportation labor and management to resolve their legitimate differences. It might be observed that the machinery for settlement of these differences, particularly the Railway

Labor Act, is out-of-phase in some respects with the demands imposed by contemporary transportation requirements.

All Americans, whether we view ourselves as producers, consumers, or carriers of the materials comprising the nation's commerce, must agree that it is transportation that binds our economic interests together. Without reliable freight transportation, free from interruption, the fabric of our economic life will unravel.

The objective of our statement is to:

1. Show the costly and wasteful effects of transportation strikes on the forest industries and on the nation,

2. Indicate the tragic economic conditions of the transportation companies which point toward nationalization of these vital services, and

3. Propose Congressional action to improve the Railway Labor Act and to provide machinery for the final settlement of labor disputes in transportation services, especially with respect to those over which this Committee has jurisdiction.

Before you now are legislative proposals to provide means to handle work stoppages on the railroads and other transportation services. Our industry believes that no more important issues than these vital proposals will come before you this session.

The railroad industry recently weathered one of its perennial labor crises. An 18-day strike, which cost the public millions of dollars and crippled at least temporarily the economy of many communities, came to a halt on August 2.

However, the seeds of further labor disputes, work stoppages and disruption of the nation's economy still are there, ready to germinate and grow. Legislation to avert such disasters in the future must be adopted. Many of the labor problems of the railroads—in fact of the entire transportation industry—are still before us. They will not just go away. Something must be done. New legislation, in our opinion, is the only answer.

That is why we are here today—to impress upon you the firm belief of the forest products industry that for the future of our nation and its economy the labor laws affecting the transportation industry must be completely overhauled.

The world has acknowledged, and we all speak with pride of the fact, that the United States has had the world's most productive economic system. In our earliest days, it was the necessity to improve commerce among the several colonies, more than any other factor, that led to the rewriting of the Articles of Confederation into the present Constitution. Ever since, our commerce with foreign countries has been important but by far the vast preponderance of buyers and consumers of our goods and services have been and are the American people.

We differ in this respect from the notable insular industrial producers—the British Isles and Japan—who manufacture goods extensively for foreign markets so they can import food and raw materials they lack at home.

Ours, on the contrary, is a continental economic system. We have our own foodstuffs; we have many of our own raw materials; we have our own consumers.

Just as in colonial times, therefore, it is internal trade that is a key to our well-being and progress. The movement of goods within the United States is just as vital to our industrial health and efficiency as the movement of goods abroad is to the British and Japanese.

If our internal transportation chokes or atrophies, the rest of industry and the nation's commerce atrophy with it.

In no case is this more true than for the forest products industry. From raw material to finished product we must move almost 80 percent of our products by rail. Our raw materials and many of our finished products are bulky. They are not easily shifted to highways or waterways and certainly not to air.

The possibilities of alternative transportation are small. Water transportation on inland waterways is limited to the watercourses themselves. Intercoastal transportation is prohibited by the strictures of the Jones Act.

A switch to highway transportation, aside from its present economic barriers, would impose a massive burden upon the nation's highways, whose cost would far outweigh the cost of modernizing rail service.

I say "modernizing" because deterioration of rail service in the continental United States is basic to many of the problems of the forest industry. Keep in mind that ours is an industry that operates in every region and every state. We tend to locate our manufacturing facilities near our raw material—South, West, East and North—and to ship our products to population centers. We need freight service from all regions in all directions.

The combination of Federal regulation, archaic labor rules, loss of earnings, lack of investment in new equipment, general lack of innovation for whatever

reason, take a heavy toll on railroad progress and productivity, and on our industry as well. Top this off with railroad and other transportation strikes and the attendant inability to move our products, and you can see the predicament in which we find ourselves.

No matter how well managed, how efficient and productive the labor force in a forest product plant, to the consumer we are no more efficient and economical than the transportation that delivers or fails to deliver our product, and yet over that we have no control.

The inadequacy of the Railway Labor Act is borne out by the fact that Congress has had to act seven times in the last eight years to settle disputes that went through the procedures of the old 1926 Act but came out with no solution.

We believe that above all this legislation written 45 years ago must be updated to provide settlement of disputes without interruption of essential transportation service.

If this is not done, we face in the future further repetitions of the costly and crippling strike through which we all suffered in July and early August. The transportation strike crisis is *not* over. The nation faces the prospect of a similar strike against the railroads within a few weeks, and others are pending.

Let us remember the impact of the July-August transportation dislocation, direct and indirect, on our economic, social, political and environmental spheres.

The series of selective strikes was started with two railroads—the Southern and the Union Pacific—on July 16. By July 30, ten lines had been shut down. Eight more were listed to be struck by August 11.

But long before the end of July, the cataclysmic effects of the strike were being felt in all parts of the country. Coal mines, on which the nation's power plants depend for fuel, were shutting down. It was estimated that 48,000 miners would be idled eventually by the strike. The Associated Press said miners were losing $750,000 a day in wages.

Farm products piled up at shipping points across the nation. Many didn't even get that far. They were left to rot in the fields. Some 7,000 to 12,000 harvest workers were idled in the Salinas Valley of California. Citrus growers in Southern California estimated their losses at $500,000 a day. Melon and tomato growers there set daily losses at $360,000 each, and over-ripe lettuce was plowed under to make room for the fall planting.

Who pays the cost of all this waste? The consumer, all of us, in, as well as out of, Congress.

Before the end of July a warning came from a grain firm—closed by the strikes—that the chicken industry in the Southeast could be wiped out and the economy of the area drastically curtailed. The loss of grain shipments also was affecting swine, dairy and beef cattle.

Like the coal mines, manufacturing plants were closing down right and left. Automobile plants, chemicals, electronics and others. On the day of the settlement it was calculated that 418 plants served by the struck railroads had been closed down, idling more than 40,000 employees. Who will pay for all the delays in production and delivery? The consumer—all of us.

The strike had an adverse domino effect in the paper products industry. When the trains stopped running, converting plants, pulp mills, packaging plants, and other paper-based facilities were severely affected.

For instance the imminent closing of just the California operation of one major company would have put some 500 people out of work at a loss of $50,000 per day. Had the strike continued, it could have cost 100,000 a day with 3,000 jobs affected.

Another company faced shutdowns of plants in five states involving several thousands of people.

Crop losses due to the strike resulted in severe reductions in orders for boxes and linerboard and created related unemployment.

As for lumber and wood products, five lumber companies in Oregon were shut down by July 23. By July 30 it was reported that Oregon forest products firms had lost sales valued at $36.1 million and it was predicted that 150,000 workers would be laid off if the strikes continued. The American Plywood Association said 3,000 were idled in that industry. And Georgia's pulpwood industry was described as losing millions of dollars. Of course, forest products firms in other states were affected similarly.

Valuable wood chips, used in producing paper and particleboard, were piled up to overflowing at many plants where storage capacity had been exhausted due to the effects of the twin work stoppages on the rails and at West Coast ports, where longshoremen had walked out. Wood chips were reported burned at seven locations in Idaho and Oregon.

The effect of the selective strike system applied in the rail controversy was nation-wide even though only certain roads were struck. Even the railroads which continued to operate suffered a decline in business.

Tragically, the impact of transportation strikes is not limited to the period of shutdown. Shippers and receivers must spend millions of dollars beginning to prepare in advance to deal with the effect of any disruption. And there are residual problems which take months to overcome.

Delays in moving lumber and plywood, essential materials in home building, create shortages and dislocations spurring higher costs to homebuyers. Strike-caused losses to wage earners, shareholders in companies affected, and local communities where the bulk of the dollars earned are spent, harm ultimately the Treasury of the United States which received taxes based on national economic activity.

One thing the recent strike proved above all. That is that the Railway Labor Act is not adequate to meet current situations. The strike showed conclusively that the greatest economic burden of the blow is not on the rail workers, nor the railroad companies, but on the shipper and the consumer. The damage to these innocent victims is many, many times that of the parties concerned.

We respectfully submit that the Government *must* act to protect the rights and the economic welfare of the innocent parties—the shippers and consumers—by providing a system to arrive at final settlement of transportation labor disputes without shutdown of facilities so essential to the welfare of the general public.

A selective strike, which the courts now have ruled permissible, can be as devastating to many segments of the economy as a full, national strike. In effect, there is no such thing as a true "selective" strike even if the walkout is limited to one or two railroads. In reality, all the railroads of the nation are linked. They are part of one national network on which traffic and goods are moved from one railroad to another, even though segments of the network are owned and controlled by different companies.

The crux of the matter is that the railroad industry is unique. As a highly regulated industry with obsolete labor laws and labor agreements, it lacks effective free collective bargaining. Therefore, unique procedures in handling labor disputes must be applied.

It is obvious that our vital transportation industry—the arteries and veins that provide the lifeblood for the nation's economy—is in a sorry state. The railroads and airlines have been sapped of their vitality, largely, we believe, by archaic regulations and union requirements. Several leading railroads are in bankruptcy, and a number of others are on the brink of financial collapse. You have heard from the Air Transport Association that the nation' airlines are in serious financial difficulty. Most of our airlines operated last year with large deficits. While these transportation industries are expected to serve our nation's needs and to respond in our economy as private enterprise, they are so restricted by government regulation and so choked by union requirements that they no longer can survive unless Congress provides relief by permitting common sense and fairness to be applied to these vital services.

The dark spectre of nationalization of our private railway and airline systems could be imminent if you fail to overhaul the obsolete railway labor laws.

Careful investigation should be made of the rights, obligations and opportunities for improvement of labor-management relations under the Railway Labor Act:

(a) Many of us have long assumed that a strike has as serious impact on employees as it does on the employer. Traditionally, we have thought that when a union goes on strike its members are cut off as completely from income as is the company whose production has ceased. Also, we have assumed that the right of a company to lockout (which means simply the closing down of a facility or operation) equates with the right of a union to strike. The evolution of labor-management relations has made these original assumptions no longer valid. Modernization of the Railway Labor Act will require a reappraisal of the relative bargaining positions and options available to both labor and management.

(b) Whipsaw and selective strikes, particularly in an interlocking transportation industry, can be oppressive weapons. The lockout by management can be self-destructive. Should not the rules for labor-management relations protect the public interest from such practices by either party?

(c) Lack of authority to union negotiators to make binding agreements on behalf of the members they represent often has led to settlements at

the bargaining table only to be followed by rejection on a ratification vote. This seriously hampers the collective bargaining process by making the employer extremely reluctant to put out his best offer because he might doubt the *bona fides* of an acceptance which can be so easily rejected. Is it not appropriate to require negotiators on both sides of the bargaining table to have authority to make binding settlements?

(d) Railroads and airlines now are uniquely required to finance strikes against themselves, in effect, because the Railroad Unemployment Insurance Act provides unemployment pay for employees while they are out on strike, and this obviously does not encourage collective bargaining. Should these transportation industries be treated differently than other industries in this respect?

(e) Secondary boycotts and other pressures imposed on third parties and the public to cease doing business with a struck employer are awesome weapons. Taft-Hartley has certain prohibitions against them, but the public can be seriously damaged by rights to resort to secondary boycotts under the Railway Labor Act. Should not they now be prohibited?

(f) Management needs the loyalty of all its employees, certainly the individual loyalty of its supervisors. The Railway Labor Act permits "subordinate officials" to belong to unions just as do the employees they supervise. This could, and undoubtedly does, interfere with supervision and discipline, and therefore, weakens the employer in administering and enforcing the labor agreement. In this age when the cocept of "conflict of interest" is so clearly enunciated in public affairs, is it not paradoxical that "conflict of interest" is protected by statute in the Railway Labor Act?

(g) A basic right of employees have been understood to be the right to jointly decide to join or not belong to a union. We understand that this and other basic representation procedures long provided by the Labor-Management Relations Act are not contained in the Railway Labor Act. Why should not parties under the Railway Labor Act have the same rights as afforded in all other industries?

(h) Undoubtedly, the most important factor in the balance between railroad unions and management in collective bargaining has been the tendency of Congress, when collective bargaining has failed and emergency strikes have resulted, to enact high wage settlements without requiring more efficient work rules and practices. This practice by Congress has hampered bargaining, the give and take, which is ordinarily assumed and expected. Is not this practice one cause of the breakdown in collective bargaining under the Railway Labor Act?

(i) Also, is it not the responsibility of the Congress, in the present circumstances, to fortify the provisions of the Railway Labor Act intended to encourage labor stability and to provide the means to resolve labor issues, by now encouraging labor-management collaboration for improved productivity?

(j) Finally, and most important, since our nation as a whole, and certainly the forest products industry, cannot afford the continued strikes on our railroads, we ask you to provide the following emergency strike provisions, after the usual negotiation and mediation provided under the Railway Labor Act have failed: the dispute should then be referred to a panel established by the Secretaries of Labor, Commerce and Transportation for investigation after which the panel would recommend to the three Cabinet officers one of the following courses of action:

(1) Do nothing, if a strike would not sufficiently affect the public interest or if it is determined that the parties should be left to their own devices,

(2) That a Board be directed to select between the last best offers of either party as a binding settlement.

(3) That a Board be directed to make a binding settlement.

I will emphatically state that we are strongly against government-imposed settlements in industries where free collective bargaining exists. Therefore, we would oppose the spreading of such intervention to other industries. But, since all other remedies appear to have failed for the railroads, we believe that final offer selection and the binding settlement approach should at least be tried.

It is our earnest hope that this testimony will assist this distinguished Committee to pioneer in national transportation progress. The statutes emerging from your deliberations may well mark the turning point of national economic and social development.

Facing the National Transportation Issue
A Position Paper by The Forest Industries Council
August 5, 1971

The American railroad system, having suffered selective disruption for a period of 18 days, was restored to service by agreement between labor and management Monday at noon. The new contract is subject to ratification within 21 days.

It may appear to both parties to the controversy, to government officials, to the Congress and to the public at large that the transportation crisis is past. But manufacturing companies, shippers, freight forwarders, wholesale and retail outlets, and consumers have paid the price for the eighth rail crisis in as many years. The nation as a whole has suffered losses in money, time, economic development, productivity, and convenience which will never be recovered. Tragically, the nation faces the prospect of a similar strike against the railroads within eight weeks time and others which are pending.

While the impact of the selective transportation dislocation is fresh in the minds of all affected citizens, organizations and institutions, it is constructive to examine the direct and indirect economic, social, political and environmental effects of transportation stoppages and to consider whether the United States can afford them in the future.

The Forest Products Industries Are The Nation's Largest Rail Shipper

The forest products industries are a complex nationwide structure geared to provide more than 5000 different products from the conversion of wood and wood fiber.

These products range from wood raw material from the forest -- logs, pulpwood, chips and wood for fuel. They also include solid wood materials -- lumber, plywood, particleboard, and similar items with a variety of uses. And they include products made from wood fiber such as pulp, paper, paperboard, cartons, shipping containers and other items.

The forest products industry is one of the largest employers of manufacturing labor in the United States. It is also one of the largest users of rail service both in tonnage and dollars. Paper and wood products together generate some two billion dollars annually in rail freight revenues – more than 15 percent of the total. It is a fact that 86 percent of all pulp and paper products and 78 percent of all lumber and wood products move from the mills to the consumer by rail freight.

In addition, raw materials move to the mills by rail.

Railroad stoppages, therefore, whatever the cause, impose immediate and drastic impacts upon the forest products industries, their mills, workers, and dependent communities at one end of the distribution line and the total U. S. population which needs the products at the other end of the line.

The forest products industry, therefore, while it is the largest rail shipper also depends upon other transportation modes for both domestic and foreign commerce. It is qualified to review transportation stoppages in the light of its own experience, its nationwide impact, and its services to consumer needs.

Transportation Disruptions and Their Effects: Before, During and After

The impacts of transportation strikes are not limited to the period of shutdown. Shippers and receivers are both aware of imminent contract negotiations, for instance, and must spend millions of dollars beginning to prepare in advance to deal with the effect of any disruption. Dislocations peak during actual shutdowns of transportation, even on a selective basis. And, while service may be authorized upon settlement of differences between labor and management, there are residual problems which may take months to overcome.

Before A Strike

Even rumors of an impending strike prompt manufacturers to increase production and to move stockpiles of basic materials well in advance so that wholesalers and retailers will have inventories to meet regional and local demand. This pattern is clearly established in the normal practice of the steel industry when it faces labor negotiations. When transportation strikes are anticipated, however, the necessity to adopt this pattern is imposed upon all shippers and tends to impose new volume burdens upon an already inadequate rail car fleet.

Abnormal demands upon available rolling stock tend to clog the rail system and result in shortages of cars for shipments. When cars are not available to move higher rates of production, manufacturing companies are sometimes

faced with the necessity of slowing production or shutting down altogether because their own storage space is limited.

Thus the anticipation of a rail strike alone can be detected in a breakdown in the orderly manufacturing and distribution chain. If the excessive demand for rail service results in distribution bottlenecks, which already occur on a seasonal basis with respect to box car availability, artificial shortages for some products are created in market areas and there is a tendency for prices to move upward. The consumer pays the cost of anticipated rail strikes in this way, and the manufacturing worker may be laid off due to excessive pressures for the movement of production which the railroads cannot accommodate. Any threat of rail service stoppage creates an economic distortion which is painful and costly to many citizens.

What Happened During the Rail Strike

The effect of the selective strike system applied in the rail controversy just ended was nationwide despite the fact that only certain roads were struck. Even the railruads which continued to operate during the recent strikes suffered a decline in business.

The U. S. Railway system is a network with free interchange of rolling stock regardless of the originating line. It is obvious that a strike against a key railroad, such as Southern Pacific in the Pacific Northwest, will ultimately be felt in the Eastern markets dependent upon forest products generated in the Western states. Thus happened during the 10 days of the Southern Pacific shutdown.

A forest products mill is generally dependent upon one railroad to move its products to population centers. Generally there is no alternative railroad or other mode of transportation available. The Jones Act, which requires that products moving from one U. S. port to another be transported in American ships manned by American labor, has effectively denied manufacturers access to domestic water transportation. Even if the Jones Act had been repealed, however, it would not have benefited West Coast shippers during the recent rail shutdowns because a longshoreman's strike already underway has effectively closed the West Coast ports.

Under these conditions sawmills and plywood plants in Washington, Oregon and California had no satisfactory means to move production to even West Coast markets.

The nature of forest products, in the form of logs, chips, lumber, plywood, pulp and paper, requires massive movement by rail or water. Trucks and highways can absorb only a relatively small proportion of production and are economically feasible only for relatively short distances. Even if over-the-road rigs had been available in sufficient numbers, therefore, the consumer would have been obliged to bear the higher cost of their use.

Effects After The Strike Has Ended

The railroad strike has ended and the railroads are undertaking to restore service as rapidly as possible.

Clearing the marshalling yards alone will impose heavy burdens upon available personnel and until this clogging has been overcome there will be a slowdown in the movement of freight from manufacturer to market.

Since there was a sense of urgency to load every available car prior to the strike and move it towards its destination, the cars tied up by the strike are effectively out of service for shipment origination until they have been unloaded and returned to the originating line.

Most traffic in forest products industries originates in the West and South and moves, East and North, respectively. The principal rail centers are in the Midwest, North and East.

Forest products industries freight already aboard cars is either in the congested yards of these centers or will be moving to such centers to add to the congestion. In the West and South, rail equipment will be in short supply for lumber, plywood and paper manufacturers to move daily production until normal service is restored which is expected to require several weeks.

Storage areas in all three categories are filled to capacity and production must be limited to volumes which can be accomodated in existing storage facilities. Many forest products require inside storage.

Slowdowns or suspensions of production cause unemployment and hardships for workers who lose wages and have their purchasing power reduced. Manufacturers face possible disintegration of the available work force if dislocations persist for too long a time.

Delays in moving available volumes of building materials, such as lumber and plywood, will create local shortages which will have immediate impacts on building activity. Builders will be obliged to pay premium prices for available stocks of these materials with consequent higher costs to homebuyers. Both lumber and plywood are used in the framing and primary skin of houses and their basic use precedes the use of other building materials such as brick, plumbing equipment, electric wiring, insulation, plaster board, and other interior requirements. This means that shortages of lumber and plywood will affect not only the scheduling of housing construction but will reduce employment for carpenters, masons, plumbers, electricians, and other construction industry skills.

When paperboard shipments are cut off, converting plants that make boxes are unable to operate. And manufacturers of consumer products -- lacking packaging and shipping cartons -- must shut down.

The ripples which are caused by production and distribution slowdowns extend to every citizen from the point of manufacture to the point of purchase.

Assessing the Economic and Social Costs

Business is often accused of evaluating work stoppages of any kind only in terms of their economic effect. But, the fact is that whenever there are dislocations of widespread economic significance it is people who are the ultimate victims.

The Chairman and the Council of Economic Advisers stated that if the selective rail strikes had continued through August they would have cost the economy $50 billion.

Losses of such an order to the national economy affect the wage earners, the share holders in the companies affected, the local communities where the bulk of the dollars earned are spent, and, ultimately the Treasury of the United States which receives taxes based on national economic activity.

But the people of the United States suffered more direct losses than those which could be measured in dollars.

The people must pay the higher cost for agricultural products which were plowed under, left to rot in the fields, or spoiled in transit.

The people must pay the higher costs for housing which was delayed or will be offered at a higher price because the cost of materials which make up a house were in temporary short supply.

The people will suffer the electric power consequences which will occur because coal failed to move to the power generating stations.

The people will bear the higher costs of welfare and food stamp programs which suffered new pressures because of the thousands of citizens thrown out of work because their employers could not continue to operate.

In the plywood industry alone, nearly 3,000 workers in Oregon were laid off by July 23 as a result of the rail strike. The American Plywood Association estimated that had the strike continued, an additional 3,483 workers would have been idled by August 6 and 3,000 more by August 10 -- all in the state of Oregon, the leading plywood producing state. Of course, wood product workers in other states would have been similarly affected.

To these direct costs to the people will be added the costs of restoring total transportation order. Manufacturers and distributors will also need to recoup some of the losses they have suffered as the result of a railroad strike. This means higher prices to consumers.

Transportation Stoppages Should Be Eliminated

The transportation systems of the United States are the channels for conveying the life's blood of the nation to its people. Only transportation can achieve the adequate distribution of goods required for the people to sustain their standard of living.

The United States and its complex social, political and economic structure can no longer afford transportation stoppages. The Congress has the obligation to devise a means to make certain that the vital transportation systems cannot be shut down.

The forest products industry intends to testify in support of legislation which will require both transportation workers and transportation management to keep freight systems operating without interruption in the national interest.

Mr. DINGELL. Mr. Kittle, the committee is grateful to you for a very well thought out and very helpful statement. We are glad you are with us this morning.

Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Kittle, I want to thank you, also, for a very fine statement, and a very fine recitation of the damages to the forest industry as a result of the strike of the railroads and the effect that they had on the economy.

You mentioned in your statement that the rights to selective strike have recently been approved by the court, so I notice you are aware of it. And we here in the committee have had to start with that very basic right that the unions have, the right to selective strike.

For that reason, I think most of us have felt that perhaps the first thing that has to be done is to define the selective strike, and perhaps to limit its consequences in that regard.

I notice you didn't say anything in your statement about that, but would you care to comment on it? Are you proposing that we eliminate completely the right to selective strike, or are you proposing anything in that regard?

Mr. KITTLE. Because of the very serious damage to the public interest, to our Nation's economy, we propose that both selective strikes and lockouts be prohibited.

Mr. HARVEY. Let me say, first of all, I guess I would disagree with you. I may wish that were a possible course, but I truly don't believe it is a feasible course in this Congress. I don't believe that Congress is about to eliminate the right to selective strike as far as the unions are concerned.

I do think that it is entirely possible that some sort of limitations may be put on selective strikes. In fact, in the bill introduced by Mr. Staggers and Mr. Eckhardt, described as the union bill, they themselves put limitations upon that selective strike which, very interestingly would prevent a strike to the extent that was just recently carried out in the month of July in our country.

Let me go on to page—so I don't take too much time here—page 14 and 15, where you recommend in your general recommendation there that a panel of three Cabinet officers take one of the following courses of action.

I note that your recommendations are, I believe, identical or just about identical to those of the ATA, and those of the American Association of Railroads. Is that correct?

Mr. KITTLE. They follow substantially, our recommendations follow substantially, I believe, their bill, although not entirely, because I believe they have more options available, such as factfinding and nonbinding recommendations, which we think have been tried and proven to be not worthwhile.

Mr. HARVEY. I note you also recommend that the panel select one of the following courses of action. Did you mean it in that way? Would you limit the panel to selecting one or recommend that the panel truly have the right to select one and if that does not work, go on to another one?

Mr. KITTLE. We have given considerable thought to this and we came to the conclusion that one option would be the better course.

That is for this reason. We only propose three, two of which provide a final settlement. The other one is to do nothing, because enough public interest is not involved or because the parties should be left alone in the circumstances.

So, with only those three, we didn't think that a series of options should be recommended.

Also, where this is recommended in other bills, we would have been afraid that by providing a series of options that the tendency would be to start with the less serious one first, such as, say, factfinding.

If the factfinding and recommendations were turned down, what would be the natural tendency of whoever was going to say, make the next step, take the next option? It would be to escalate the requirements of a settlement, we believe.

For this reason we would oppose the series of options under those conditions that I have described.

Mr. HARVEY. Doesn't it truly make your first alternative a meaningless alternative? Can you imagine any panel selecting that to settle a strike?

Mr. KITTLE. Yes, if a strike is a minor one, affects the public interest in a minor way. Now, you note we don't try to get a final settlement in this type case.

Mr. HARVEY. If it does not affect the public interest the panel would not be interested in it.

Mr. KITTLE. So they turn it down. That is why the alternative is there. Someone should determine the impact of the public interest. This is a very low threshold, but because of how the effects of small rail strikes can be tremendous on our whole economy, we think that they should be looked at.

Mr. HARVEY. I think, getting to another subject, on page 12, you mention the whipsaw. I gather you would recommend the elimination of the whipsaw technique, and what you would recommend would be the elimination of the selective strike, is that correct?

Mr. KITTLE. That is correct. We think that since our national railroads are such a strongly integrated chain that you can't break one link and keep the whole thing together.

Mr. HARVEY. In the bill I have offered, or introduced, we have provided that the settlement reached in the one selective strike must be offered to the other carriers. Now, would you think that is a satisfactory solution to the whipsaw problem?

Mr. KITTLE. Incidentally, we studied carefully your statement before this committee and your bill, and we think there are many very fine things in it, and if selective strikes were to be permitted, then I think that would have to be one requirement, or else the first settlement might be considered the floor, and it would go up from there.

Mr. HARVEY. I have no further questions.

Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Metcalfe?

Mr. METCALFE. Thank you very much, Mr. Chairman.

I am sorry to be late. I missed most of Mr. Kittle's testimony. However, my distinguished colleague, Congressman Harvey, really asked the questions I was concerned about, because this panel is going to make its recommendations to the Cabinet officers and on page 15 you list

three, and you did not indicate whether or not they should try A before they tried B, and then B before they tried C, or whether or not they may have the option of going to any one of them first.

Mr. KITTLE. We would recommend that only one be used, that the panel would have the responsibility for making this important determination. If the strike on the railroad or airline does not have sufficient impact on the public interest, then, nothing more should be done by this process. However, if it does have sufficient impact for this process to be put into operation, that is, to keep the Nation's economy from being adversely affected by such a strike, then we think one of the two next options should be taken.

Now, some situations might not lend themselves to a selection between the best final offers, so the binding settlement by a board might be deemed more satisfactory, but we would propose that the panel be empowered to make that determination.

Mr. METCALFE. My question is, would you start out with your first recommendation and then make an assessment of that before there is used the second recommendation?

Mr. KITTLE. No, sir, we would just provide for one option.

Mr. METCALFE. One of the three?

Mr. KITTLE. Yes, sir.

Now, we realize if the panel made the determination that the strike did not have sufficient impact on the public interest, later on it might turn out to have that, but having once made this, they would be stuck with it. If the strike changes in its character, if it spreads, then another determination would have to be made I would think at that time.

Mr. METCALFE. Thank you very much, and thank you, Mr. Chairman.

Mr. DINGELL. Mr. Kuykendall?

Mr. KUYKENDALL. Mr. Kittle, it is nice to have you with us, and I thank you for a very fine report.

Do you have at your fingertips even a ball park estimate as to what percentage of the rail mileage in this country exists without any real competition?

Mr. KITTLE. We have looked at this from a different point of view; that is, what sections of this country have only single line service.

Mr. KUYKENDALL. Well, that is exactly what I am asking you.

Mr. KITTLE. Yes. We have tried to get this figure, but I must say, unfortunately, we have not gotten a figure we think is sufficiently accurate to give to this committee, but we will certainly try to get this in a manner that we think you would accept. That is to say, accurate enough, and then we would like to submit it to you.

Mr. DINGELL. Without objection, that information will be inserted in the record when received.

(The following information was received for the record:)

DATA REGARDING SINGLE-LINE SERVICE

In an attempt to provide this Committee with data regarding single line service, we have consulted with the Association of American Railroads and find that there is not information available specifically on this point. However, we believe some examples may be helpful to the Committee.

Mr. John Hiltz illustrated the point in his testimony by referring to the city of Los Angeles as being served by three railroads but if a shipper is served

by only one line he is totally without service if that line is struck. Along this same line, the AAR found that there were 77 cities with a population of more than 25,000 in the State of California that were completely deprived of service during the UTU selective strike this summer. On the other hand, there was only one city without service in the State of Georgia, and in many of the eastern States there were only two or three. This, of course, only illustrates the erratic nature of the selective strike. Another figure which was used for illustration was that of total rail mileage in a State. Ninety-two percent of the rail mileage was out of service during the selective strike in the State of Arizona and there were about a dozen States where over half the mileage was out.

Mr. DINGELL. I would observe it is the usual practice of the committee to keep the record open for something like 10 days after the close of the hearings.

Mr. KUYKENDALL. If there are representatives of either the management or brotherhoods in the room that have the information available, I would appreciate it if they would give it to me. I agree with the gentleman from Michigan, Mr. Harvey, in that I think there is a likelihood of this committee's recognizing the legitimacy of truly selective strikes, so for that reason I am going to ask your help in some of the decisions we may have to make in determining to what extent this can go; even though you have not proposed it, I am going to ask your help in suggesting how to expedite such an idea.

I, at the present time, do not tend toward being willing to accept a percentage at all. This is about my only disagreement with the Harvey bill. That is because if a national emergency in this country were such that 10 percent of the total industry in this country were affected adversely overnight, I don't think there would be any hesitancy at all on any governmental director to call that an emergency.

Because of the monopoly situation, where the railroads offer only one-line service in certain areas, if we talk about a 20-percent or 25-percent or 40-percent strike being allowed, is it not true that—let's say we use this 20-percent figure—that very likely, instead of having 20 percent of the economy on a selective basis shut down, we end up with 100 percent of certain industries shut down, or 100 percent of the economy in certain areas shut down, not just 20 percent?

Do you have any experience—do you have any records—of just to what extent it was not 20 or 25 percent, but approaching 100 percent, of an actual shutdown of an industry or of an area in this country?

Mr. KITTLE. We do know from our industry figures that some sections of the country were almost entirely shut down. Some areas of our industry were drastically affected. For example, much or all of the printing paper, magazine paper, and the like have a clay content.

Mr. KUYKENDALL. Ordinary dirt?

Mr. KITTLE. Well, it is a special kind of clay.

Mr. KUYKENDALL. But it is still earth?

Mr. KITTLE. Yes, sir; it comes from the ground.

Mr. KUYKENDALL. I don't think most people know that.

Mr. KITTLE. It is a white clay, and one of the finest places to get it, one of the few places east of the Rockies, I think, is in Georgia. I believe you are a fellow Georgian, Mr. Metcalfe.

Mr. METCALFE. Yes.

Mr. KITTLE. The Southern Railroad is the only railroad that goes through that area, and when it was down, about 90 percent of the

clay was shut off to the entire paper industry for these printing papers. So, to that extent that this one small area was shut down for even a short time, it could be a much smaller area than you might suppose, it could have shut down the whole printing paper part of the paper industry.

Mr. KUYKENDALL. Would you define in your own, off the top of your head, what is meant by the legal term "restraint of trade"? Just off the top of the head. I am not trying to strain you.

Mr. KITTLE. I think it is just putting such handicaps in the way of someone in business that he is damaged.

Mr. KUYKENDALL. Do we not have cases on record of a company that has furnished a material, with no contract, just ordinarily furnished raw material to another company, and the company that had furnished the raw material, because of circumstances, inadvertently or deliberately decided to quit furnishing that raw material, that the offended company could go to court and claim restraint of trade and win a suit?

Mr. KITTLE. I would hesitate to answer. I am a lawyer, but I am not skilled in that area of the law, and I would hesitate to answer, because some of my colleagues might be here that know the right answer.

Mr. KUYKENDALL. Does not restraint of trade at least imply that business has a right to expect service, not only on a moral basis, but a legal basis?

Mr. KITTLE. Yes, indeed. Of course, under our labor laws there are many ways that a man can be put out of business legally right now, and unfortunately I suppose we have come to recognize those, and there is not very much complaint about it, except by the fellow that is put out of business.

Mr. KUYKENDALL. I don't think there is anyone on the committee I know of that would support legislation that would say when you have two competing railroads—say, two serving the Georgia clay business—if you had two railroads, I know I would never vote not to let one of them strike and use that as an economic pressure for their gains against the other, against management, because you had another railroad in the business.

For that reason, we are searching for proper ways. Now, the administration bill just requires that it be an emergency, but it says "national emergency." Well, it is just as serious to the lettuce and tomato manufacturers in California when they are 100-percent shut down as if it were a national emergency instead of a local emergency.

Have you fellows given any serious thought to what sort of definition we would put into legislation to define a selective strike that was not or did not create a total shutdown?

Mr. KITTLE. We have not been able to arrive at any helpful conclusion there, I am afraid, for this reason. Well, for the reasons you outlined, it is just as fatal to a man that is completely shut down and put out of business. For us to say, create a percentage or cutoff figure, some people can be then legally put out of business, and others in another area where the percentage was met would be allowed relief.

So, that is why, in our statement, we would hope that you could provide settlements that would not require or not permit selective strikes or, on the other hand, lockouts, because that is just as deadly to the shipper or the consumer if a company shuts down its own operations as it is if the union shuts it down.

Mr. KUYKENDALL. Are you saying, Mr. Kittle, that in your opinion, that the proper pressures that can and should be brought in labor management disputes are the economic pressures that can be brought directly on each party, but that the strangling of a third party should not be, either by lockout or strike, part of the pressure brought to bear in labor-management relations?

Mr. KITTLE. That is correct. We feel that very strongly, and we think the innocent third party should be protected in the national interests.

Mr. DINGELL. Mr. Adams?

Mr. HARVEY. Excuse me. Would the gentleman yield for me to ask one question to clear up something?

Mr. ADAMS. Yes.

Mr. HARVEY. My friend from Tennessee said he disagreed with the percentages in the definition of "selective strike" that is included in the bill I introduced.

Mr. KUYKENDALL. Will you yield?

Any percentages.

Mr. HARVEY. Yes, but I just wanted to point out to the witness and others so there is no misunderstanding that we have assumed this method of defining selective strike, very frankly, because it is the only method that has been called to our attention and that no better method has been suggested.

I would point out, nevertheless, that we do provide an alternative for the President if he finds that even these percentages would still result in a situation that emperiled the national health and safety, he could still make a finding that prevented a strike even with a lesser percentage. That is the only thing I wanted to point out.

Mr. ADAMS. Mr. Kittle, it is nice to have you here today.

On page 13 of your statement, you indicate there is a secondary boycott effect and that has been prohibited under Taft-Hartley and perhaps it should be under the Railway Labor Act.

Actually, in the nature of the transportation business any time there is a transportation strike, it will have an effect of a secondary boycott, will it not?

Mr. KITTLE. All strikes have secondary effects, to be sure, but many of the secondary boycott activities have been prohibited by the National Labor Relations Act, as amended, and we think that the same class of activity should be prohibited under the Railway Labor Act.

Mr. ADAMS. I am not aware, although there may be some, but I have been through a number of these strikes now since being on this committee, and I don't remember any of the classic secondary boycott activities that were suffered by American industries which led to the Taft-Hartley Act. I am well aware of the fact there is a secondary effect any time the transportation industry is involved because, of course, the consumers and shippers are hurt before the parties, and this has always been our basic problem.

Can you name any other types of secondary boycotts, of which you are aware, that have taken place, other than the usual effect that takes place when they shut down a line?

Mr. KITTLE. There are a whole line of cases that are in the books, and I would be glad to try to get those for you.

Mr. ADAMS. I would like to know, because I know of the hot cargo case in the trucking industry, but I don't know in the railroad in-

dustry, to which this hearing is devoted, of particular boycotts, or slowdowns on particular goods, as opposed to a shutting down of a line or whole industry. I would appreciate it if you would supply me with the information because that is a problem we have not felt, at least this Member has not felt as a particular problem with this act.

Mr. KITTLE. Yes, we did not want to say this is a major problem. The major problem is the complete shutdown or the situation of a large partial shutdown of the vital transportation industry. I did not want to equate these as equal problems.

Mr. ADAMS. I didn't know there was one, and if there is one, I would like to know about it.

Mr. KITTLE. We will be glad to supply it to you.

(The following information was received for the record:)

THE NEED FOR CONGRESSIONAL ACTION PROHIBITING SECONDARY BOYCOTTS IN THE RAILROAD INDUSTRY

Section 8(b)(4) of the National Labor Relations Act prohibits most secondary boycott activities in industries governed by that Act. The statute seeks to preserve the right of labor organizations to bring pressure to bear on employers in primary labor disputes and yet shield other employers not involved from pressures and controversies. In applying the broad prohibition of Section 8(b)(4) the courts have generally focused on the nature of the work involved in the primary dispute. Inducement or encouragement to withhold services directed at those who normally deal with the work in dispute is deemed primary. Inducements or encouragements directed at other persons, even when confined to the situs of the dispute, as in the case of picketing at a gate reserved for those whose contacts are not related to the work in dispute, are deemed secondary. See *NLRB v. Denver Bldg. & Constr. Trades Council*, 341 U.S. 675, 692 (1951), *NLRB v. International Rice Milling Co.*, 341 U.S. 665 (1951) and *Electrical Workers Local 761 v. NLRB*, 366 U.S. 667 (1961). A great body of case law has been built up over the years which serves to protect persons not involved in or related to the primary dispute none of which is applicable to the railroad industry as such.

The classic example of the secondary boycott in the railroad industry is found in the attempts by several railroad unions who were striking the Florida East Coast Railway Company to employ such tactics against the Jacksonville Terminal Company.

The Jacksonville Terminal Company operates a passenger and freight rail terminal facility in Jacksonville, Florida. It serves as the gateway for all rail traffic entering and leaving Florida. Four railroads used this facility at the time the dispute began; the Seaboard Air Line; the Southern, the Atlantic Coast Line and the Florida East Coast Railway Company. (Since the time this dispute began, the ACL and SAL have been merged into the Seaboard Coast Line.) Traffic on these carriers into and out of Florida is carried on their own lines through the terminal facility. There is also a substantial amount of interchange among all these carriers which is carried on within the terminal property.

Since 1963 several nonoperating unions have been on strike against the Florida East Coast. In early 1966, the operating unions joined the strike, although FEC still continued to operate. In an effort to exert greater economic pressure, the operating unions on May 4, 1966 stationed pickets at every entrance to the Jacksonville Terminal and at every public crossing around the perimeter of the terminal where train or switching movements could enter the terminal property from the outside. The picketing included crossings where the trackage was under the sole control and ownership of either Coast Line, Southern or Seaboard.

The effect of the picketing was unlimited and complete. As soon as the picket line was established, operations within the terminal began to come to a halt. A complete standstill of all activity within the terminal occurred—not simply the handling of interchange with the FEC but those activities which did not involve the FEC at all.

The United States District Court for the Middle District of Florida enjoined the picketing except at a "reserved gate" set aside for FEC employees in a pro-

ceedings brought by the Coast Line, Terminal Company and Seaboard. On appeal the Fifth Circuit reversed on the sole ground that the Norris-LaGuardia Act deprived the federal courts of jurisdiction to enter such an injunction.* The Fifth Circuit characterized the unions' conduct as follows:

"[The picketing] covered substantially the entire Terminal Company premises, as well as other contiguous sites in Duval County which were under the sole control and operation of the ACL and SAL. As a result of the picketing, hundreds of appellees' employees refused to work. . . .

"Attempting to translate the factual description of appellant's [petitioners here] activities into labor jargon, for purposes of legal analysis, *this was an attempt*, through peaceful picketing, *to elicit a secondary boycott of the FEC by the appellee-companies*, which depended for its success upon the aid of appellees' employees in refusing to cross appellants' picket lines." *Brotherhood of R. Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F. 2d 649, 651 (5th Cir. 1966). (Emphasis supplied)

The Supreme Court granted certiorari but affirmed the judgment of the Court of Appeals by an equally divided court. 385 U.S. 20 (1966).

Another action was brought in the state court, the Florida Circuit Court for Duval County, by the Terminal Company alleging among other things that the picketing amounted to a secondary boycott unlawful under the law of the State of Florida. The trial court issued an injunction against the picketing holding among other things that the picketing was in the nature of an unlawful secondary boycott. The Florida District Court of Appeals affirmed (201 So. 2d 253 (1967)) and the Florida Supreme Court dismissed an appeal and denied certiorari.

The Supreme Court granted certiorari (392 U.S. 904 (1968)) to determine the extent of state power to regulate the economic combat of parties subject to the Railway Labor Act.

In a 4–3 decision the Supreme Court held that such issues were governed by federal rather than state law. (*Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 387 (1968)). The Court reversed the state court decision holding that in view of the Railway Labor Act's failure to explicitly prohibit secondary boycotts a union was free to employ whatever peaceful economic power it could muster—including primary or secondary picketing—as long as its use conflicted with no other obligation imposed by federal law and, therefore, such conduct must be protected against any state proscriptions. Thus, union conduct which admittedly can be described as a secondary boycot and prohibited under Sections 8(b)(4) of the National Labor Relations Act can occur within the railroad and airline industries because (1) federal courts cannot enjoin such conduct because of the Norris-LaGuardia Act and (2) state statutes prohibiting such conduct are unavailable because of the lack of prohibitions against secondary boycotts in the Railway Labor Act.

The Supreme Court clearly indicated the need for Congressional guidance in this area characterizing its decision in the *Jacksonville Terminal* case as a "solution" that is not "really satisfactory" because of the failure of Congress to furnish "neither useable standards nor access to administrative expertise". It reached its "solution" in the absence of a "much clearer manifestation of congressional policy." Clearly, the matter requires a satisfactory solution and one that only Congress can provide.

Mr. ADAMS. Let's go to the deep problem you have here. On page 14 you indicate here that one of the problems you believe that has occurred is that these strikes have come up here because Congress has, for example, given higher wage settlements or selected the highest part of the board.

I differ with you on that and it goes to the underlying philosophy, and I will get in a moment to seizure versus injunction and so on, which is for years the reason that these things have come up here. It is because the railway management wanted national bargaining, and we always ended up putting in an injunction. We have put in injunc-

*Prior to the 1947 amendments to the National Labor Relations Act, it was assumed that the Norris-La Guardia Act also prevented federal courts from enjoining any secondary boycotts under that Act. Cf. *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 387 (1968).

tions back since I can remember. The reason this wage thing started in recent years was we found that we were holding really one party to the situation and so that wage settlements—the reason they were given in the last two times was if we were holding them in and enjoining them for longer and longer periods of time, it meant a longer and longer period of time without wages even if it were retroactive.

What do you think of the proposal that has been advanced from time to time before this committee that if, instead of going to compulsory arbitration, which is what you recommend, we in effect create the circumstances of an artificial strike, which is that the Government, in effect, seizes either the profits or seizes the companies while they enjoin the men and thereby continue service with both of the parties suffering while the consumers and shippers manage to get the goods.

Mr. KITTLE. I think it would be a very severe action.

Mr. ADAMS. No question about it.

Mr. KITTLE. Most severe action that can be taken.

Mr. ADAMS. Most severe, I agree.

Mr. KITTLE. Yes. I would hope that going that far would be unnecessary to prevent strikes.

Mr. ADAMS. You indicated that as a very dear medicine.

Mr. DINGELL. If you will yield, wouldn't you ultimately have the problem to bring a negotiated settlement to a conclusion instead of having at any point in that matter a situation where somebody else was essentially by compulsory arbitration arriving at a settlement for the parties?

Mr. KITTLE. That is ultimately—well, I suppose all labor disputes are settled ultimately. I would say it would be desirable if our national economy were not damaged in the meantime.

Mr. ADAMS. You see, Mr. Dingell has come in with where I am going on this. That is, that you suggested on page 15 three alternatives. Those three alternatives are basically compulsory arbitration and the problem that this committee has had with compulsory arbitration in the past, which the Congress has passed it at least twice, is that it never tells anything.

In other words, the firemen's dispute is papered over, but it is still boiling beneath the surface, and that was—the gentlemen on the committee can verify—5 to 8 years ago—that the settlement was put in as opposed to the parties having agreed.

Mr. KITTLE. As I see this kind of necessary arbitration, thousands of labor disputes are settled every year through the orderly process of arbitration, and they are finally settled. Right now under labor agreements—it is recognized by both parties and accepted.

Mr. ADAMS. Now, that is after a contract has been agreed upon. The fundamental difference we have here, that we are trying to work out with you and with all of the others that are here, and will be here as witnesses, is that in this case we are making a contract; by that, I mean the parties are making a contract and when you have somebody else making the contract for them, it has not had a very successful conclusion.

This is why we have looked for alternatives like selective strike or artificial strike, all of these looking toward trying to make the parties settle. I agree with you that areas can be assigned to arbitration, particularly once a contract is signed, but the making of a contract is

ordinarily not either legally in American jurisprudence or any place else a matter of arbitration.

Mr. KITTLE. That is correct, although we have a contract now between the rail unions and management. That contract continues. They come up for renegotiation from time to time, and they are changed somewhat—by negotiation or by arbitration, however, contracts are changed also by interpretation. Hundreds and thousands of times a year this happens in the United States. Almost all labor agreements have arbitration.

On the west coast in the lumber industry there is no arbitration clause, generally speaking. There is no no-strike clause, so what happens when they have a labor dispute?

They will get in and negotiate for a time and if the parties dislike the situation enough, they go out on strike or the management locks out. There is no arbitration.

Mr. ADAMS. Right.

Mr. KITTLE. Now, I don't like that system.

Mr. ADAMS. That is, most of American collective bargaining, that is most of bargaining. In fact, it covers all of collective bargaining at this time, and what has been suggested in your paper and others and I can understand why, is that we carve out a part of American industry, regulated transportation industry, particularly the railroads, and say they shall not use the system that is used every place else.

Mr. KITTLE. I didn't intend to say that. The lumber industry is about the only industry I know of that does not have a recognized strong arbitration clause for settling labor disputes during the term of agreement.

Mr. ADAMS. But you agree with me, every place in industry, the establishment of the contract, if it is an evergreen contract, by notice of reopening, or contract by definite termination date, by the termination date arising, is handled in an American industry by then the parties being left to economic weapons with certain limited Government restraints available for a limited period of time.

Mr. KITTLE. Yes, of course. Now, the Post Office Department, I understand, has a requirement for compulsory arbitration when they fail to reach a settlement. This is something brand new I understand.

Mr. ADAMS. This is a new can of worms, which I am grateful we do not have before this committee.

All right, now, that brings me to my second to last point.

One is the one that Mr. Kuykendall questioned about, which has been recurring while going through this, and we have asked every witness, that is, whether or not there is an alternative method or mode of transportation so you can have the selective strikes, or the collective bargaining system function. You know, the functioning of it is that the two parties are hurt because goods go to another mode of traffic or go to another competitor and therefore the public gets service and the two parties have it out.

On page 5, you indicate that you cannot use water shipping and I know something about the lumber business, as you well know.

Mr. KITTLE. Yes, sir.

Mr. ADAMS. And I know it is much cheaper to land lumber on the east coast using water than it is using rail. It takes longer but it is certainly cheaper.

Is there any west coast to east coast American shipping available now? You indicate on page 5 the Jones Act restrictions prevent you from using it. This indicates to me you do not have it and by "you" I mean the forest products industries do not have an American water freight carrier available for lumber products to the east coast.

Mr. KITTLE. That is generally so because of requirements of the Jones Act. The Jones Act required it to be an American bottom.

Mr. ADAMS. The Jones Act required it to be an American bottom. What you say is there is no American company that is competitive and carrying lumber products from the west coast to the east coast?

Mr. KITTLE. That is what I understand, and that it is uneconomical compared to another transportation, rail, for example.

Mr. ADAMS. Would you be in favor, and this has been suggested a number of times, of an exception to the Jones Act in those areas where there is no American line functioning?

Mr. KITTLE. I am not an expert in this field and I don't, or I won't pretend to be; we do have, of course, transportation experts in the forest industries council that I would be glad to ask the question of and come up with a recommendation on it for you.

Mr. ADAMS. Could you supply us with the information? What we would like to know, because it goes to the heart of the selective strike, is this: Is there a water transport route available for shipment of lumber from the west coast to the east coast, and we would like its comparison with rail rates and then also, with the foreign rate which goes out of British Columbia?

Mr. KITTLE. We will be delighted to do it.

(The following information was received for the record:)

COMPARATIVE LUMBER SHIPPING ROUTES AND COSTS, WEST COAST TO EAST COAST

The impact of the Jones Act upon the ability of the West Coast forest products industry to serve United States markets has been drastic. Coupled with the increasing scarcity of rail cars to assure transportation to Eastern markets, the Jones Act restrictions have provided increasing incentive for the industry to ship its products in international trade, abandoning much of the East Coast market to the Western Canadian forest products industry.

Canadian producers, shipping from British Columbia ports, incur only half the transportation costs of United States West Coast producers, because of the Jones Act restrictions. The water lumber shipment rate on American bottoms from Oregon and Washington to Atlantic Seaboard destinations, now is $47.51 per 1,000 net board feet, for United States producers. There is no known published information on Canadian shipping costs. The Canadian Intercoastal transportation cost, however, is estimated by knowledgeable people who compete with the Canadians in lumber distribution. Costs of transportation that equates with the U.S Intercoastal Steamship Freight Association tariff are estimated to range between $20 and $25 per 1,000 net board feet in 1971. New ship designs now under consideration are expected to keep Canadian costs through the 1970's and 1980's near the low side of the above range. Most of the Canadian lumber is transported on foreign flag ships chartered by the Canadian shipping companies on time or trip charter contracts.

Since 1961, the Intercoastal Steamship Freight Association tariff has increased by $11.51 per 1,000 net board feet. During the same ten-year period, the water shipment cost for Western Canadian producers has risen by only about $5.00. The competitive position of the West Coast forest products industry, in serving East Coast markets, thus has continued to erode from the unfavorable situation of 1961.

This erosion is demonstrated by the trend in lumber shipments. In 1961, British Columbia had captured 62% of the total water-shipment lumber market on the United States East Coast. By 1970, the British Columbia share had risen to 83%,

leaving producers in Washington, Oregon and California to share the remaining 17%.

Most of this remaining United States intercoastal shipment is being accomplished through charters of older ships returning in ballast from the Far East to Eastern United States ports, which will call at West Coast port to load lumber cargo for the final state of the voyage. Some volume also is carried in C–4's used in moving steel from the Mid-Atlantic to the West Coast, and carry lumber on the return voyage. In the past year, three experimental barging hauls were attempted; this does not appear a promising solution at this time, simply because of the 7,000 mile haul, and the lack of markets for East Coast to West Coast return movement.

At the present time, virtually all of the remaining water shipment involves lumber. One company also moves small amounts of plywood and particleboard. The Canadian traffic is almost entirely in lumber, because of tariff restrictions on plywood.

The impact of the Jones Act upon the West Coast forest products industry (and its favorable impact for Canadian producers) has long been recognized. In 1960, 1961, and 1962, the western lumber industry attempted to obtain changes in the Jones Act by legislative suspension of the provisions to permit shipment of lumber in intercoastal trade. The only concrete result was a short-term exemption granted by the Congress for movement from the West Coast to Puerto Rico, applicable to only one company. Since, however, there is not an adequate market in Puerto Rico to sustain this trade, the suspension was used for only one voyage.

We believe it is the best interest of this nation, as well as the best interest of the industry, that modification be made at this time in the provisions of the Jones Act, to permit the use of foreign-flag shipping in the intercoastal forest products trade. Otherwise, the most populous region of the United States will become increasingly dependent upon foreign wood sources to meet its housing and other needs, while this same market is barred artificially to domestic producers.

LUMBER RATES WEST COAST TO EAST COAST

	Rate per 1,000 board feet	
	Dry lumber at 1,800 pounds per thousand feet	Green lumber at 2,350 pounds per thousand feet
Rail rate weight basis $1.85 per 100 pounds	$33.30	$43.48
Intercoastal American flag steamer rate $47.51 per 1,000 net board feet basis	33.26	33.26
Intercoastal foreign flag steamer rate net board feet basis	26.00	26.00

The Jones Act has discouraged U.S. Flag Ship construction to the point where U.S. Flag ships are unavailable for more than normal domestic requirement. The reason for this decline in U.S. Flag ships may be explained by the above rate comparison.

Mr. ADAMS. My last question involves page 15, and I was uncertain of your answer to one of the other members where you indicate that the panel should select only one alternative.

I understood where you referred to the fact that actually your alternatives Nos. 2 and 3 provide for final settlement so that is one thing that would make no difference.

Your No. 1 provides for a strike that was not affecting the public interest. If that were selected as the alternative, so that a strike would continue, do you contemplate that that alternative would have to stay in effect for the duration of the strike, or do you contemplate there being a reexamination of that selection if the strike either continued for a long period of time or spread to another; in other words, grew larger?

Once you have selected that, would there be another alternative to go in two and three, if the circumstances changes and, if so, how would it be operative?

Mr. KITTLE. I believe that we would view it this way: That if it were the same strike in character and size, that the continuation for a period of time would not justify a reexamination under this proposal, but if it changes in size and character so that it spreads over a larger area, and it involves other unions in the railroad industry or other companies, then it should be re-examined because that, in effect, would be a different strike in the way we view it.

Mr. ADAMS. How would that be triggered under your proposal? Would the same board that made the original recommendation to the Cabinet officer stay in existence and make that determination, or would there be a new board and what trigger would trigger either of the boards off?

Mr. KITTLE. I would believe that what we would favor here, and we didn't get into too much detail here because we knew other parties would, and many of your bills go into such detail so we did not do it ourselves, but I believe we would propose that this broadened strike or different strike, or strike against more companies by more unions would then, or should then go through the mediation process of the Railway Labor Act, and then wind up, if unsettled, would wind up again before a panel, a new panel, or perhaps the same panel.

Mr. ADAMS. Would you re-run it completely?

Mr. KITTLE. Yes.

Mr. ADAMS. Thank you, Mr. Chairman, and Mr. Kittle.

Mr. DINGELL. Thank you very much.

Mr. Skubitz?

Mr. SKUBITZ. Mr. Chairman, I reserve my time.

Mr. DINGELL. Mr. Kittle, the committee is grateful and thanks you for your patience and very helpful testimony.

Mr. KITTLE. Thank you.

Mr. DINGELL. Our next witness is Gerard C. Smetana, counsel for labor relations, Sears, Roebuck, appearing on behalf of the American Retail Federation.

We are happy to have you.

STATEMENT OF GERARD C. SMETANA, ON BEHALF OF THE AMERICAN RETAIL FEDERATION; ACCOMPANIED BY LAWRENCE D. EHRLICH, ATTORNEY

Mr. SMETANA. Thank you.

Mr. DINGELL. Will you identify yourself fully for purposes of the record and we will be pleased to receive your statement.

Mr. SMETANA. My name is Gerard Smetana, labor relations counsel of Sears, Roebuck, and I appear this morning on behalf of the American Retail Federation.

I would like to have sit with me during the presentation Mr. Lawrence D. Ehrlich, of the firm of Borovsky, Ehrlich & Kronenburg, a Chicago-based law firm dealing in the area of labor-management relations.

I appear on behalf of the American Retail Federation and I would like to have my entire statement for the record and I will depart and will follow the outline, but not read any portion of the statement.

Mr. DINGELL. Without objection, your full statement will appear in the record, and you may feel free to make such remarks as you choose.

Would you identify this gentleman again?

Mr. SMETANA. Mr. Lawrence D. Ehrlich, with the law firm in Chicago working closely with the Retail Federation.

Mr. DINGELL. Very well, you are welcome before the committee, too, Mr. Ehrlich.

Mr. EHRLICH. Thank you very much.

Mr. SMETANA. The American Retail Federation is a federation composed of 70 National and State retail associations. The membership of these associations consists of a wide variety of retail businesses, ranging in size from a small local store to large national chains, representative of all aspects of the retail industry, and totaling in excess of 900,000 retailers.

I would submit, although we do not have evidence—conclusive evidence—that we in retailing are among the largest users of transportation service in the country, and we feel that we are certainly affected and have in the past been affected by any national emergency strikes in the transportation industry, and it is for that reason that while normally we would be very reluctant to come before this committee or any committee of the Congress and express a point of view with respect to matters outside of our industry unless they affect us, and the law would be equal to all industries and all employers and all unions.

We nevertheless feel, as the Congress has felt in convening the hearings, that the transportation industry presents a special problem and problems at least in some quarters based on bills before you which require some special solutions, and it is for that reason we have engaged in the effort and we have deliberated long and hard and I would say certainly and particularly extensively in the last 6 months of this year, and the involvement has been total among all of the membership, and we have passed back and forth all of the proposals submitted, including certainly the plan by the administration and the plan by Senator Javits and Congressman Harvey and other plans that have been submitted in this area.

We have in studying those various proposals always come to a conclusion, and we have taken to heart what Secretary Hodgson said in the statement to the American Bar Association in London—this is a time for innovative thoughts and a time when all parties and all employers and all unions can contribute to finding a solution.

We are prepared to present and are presenting in our statement to this committee a solution that is perhaps different from any that the committee has seen, and any we are aware that has been proposed by anyone in the House by labor or management, and the way we arrived at the solution is, we have studied—the basis of studies is the administration's proposal. There has been a great deal of conflict among our membership as to the correctness of it. We were in agreement with—and what we are in agreement with today is that there is a special problem under the Railway Labor Act insofar as collective bargaining and as it extends itself to the problem of national emergency strikes, and that is that the Railway Labor Act, contrary to the Taft-Hartley Act, postpones the day of reckoning, provides for collective bargaining but enables the parties to put off many years, at times, the ultimate day of reckoning.

What has made collective bargaining work in this country is the fact that the parties have gotten together and have been required to settle their differences, and most of the time it is through a voluntary adjustment, and some of the time it is through the threat of economic restraint by either side. The Supreme Court has said many times that collective bargaining in the ultimate is a test of brute force and economic strength and therefore certainly a strike can ensue.

But that strike usually, and the theory of the strike, the theory of economic action by employers as well, is that there be an immediate impact and that the strike be close enough to the time of the dispute so that the questions involved are fresh in the minds of the people, and economic pain and suffering will occur to either side to compel them to resolve these matters.

Hopefully, the idea of a strike or lockout, which would remain in the background, would be sufficient to get the parties to agree.

We would submit the administration proposal for final offer selection has been termed innovative thinking, and has been termed a "noble experiment" and I think it is. The Secretary of Labor in his statement in London said collective bargaining is on trial. I think that is true not only in the transportation industry, but it is true all over.

We think, of course, this problem of national emergency strikes is perhaps only one problem in the reform of our labor laws, but I won't dwell on the subject. I think the problem, certainly the problem of strikes in the transportation industry, comes about by an imbalance of power, between labor and management, and this deserves study elsewhere by appropriate committees of Congress.

Insofar as the transportation industry is concerned, the strikes have been primarily in the railroad industry that have caused national emergency strikes. Therefore we would submit that legislation should deal only with the transportation industry, since we do recognize that any form of final offer selection, however inventive, is a departure from total free collective bargaining, because there is no question that in some form or other a third party is imposing a solution which the parties themselves had not agreed upon.

This was the hardest pill for us to swallow, because we do believe that collective bargaining is the very best system that has functioned in this country, and will continue to function. We felt therefore that if there is to be any departure, and certainly any final offer selection in the transportation industry would be a departure, it should be a very limited departure and limited only to the specific problem that it is solving, where there is a very severe problem in transportation which has severe effects immediately felt by large segments of American industry and the public.

We also, however, feel as Secretary Hodgson stated in London, that the final offer selection proposal, if it is taken in the spirit that it is designed, should in fact promote free collective bargaining.

I am not an expert in the transportation industry and don't profess to be, and most of my work has been or all of my work has been in other industries, but as a student of the law I think I can comment that the transportation industry has special problems, particularly that portion under the Railway Labor Act.

Therefore, I submit that in the transportation industry, for national emergency strike purposes, air and rail be transferred to the Taft-

Hartley Act so there can be communality in the administration of the law.

In terms of the other suggestions that are contained in the administration's bill, the administration's bill gives the President three options, and the first option is extension of the 80-day cooling-off period for an additional 30 days. I should point out first, in all of these bills, to my awareness, there is a preliminary finding or requisite that there be a national emergency declared. I think this is the basis from which we begin, that there is a national emergency.

Senator Javits, of course, would say we could also go to a regional emergency. We would part company from that proposition. While it has surface appeal, and in fact there are many severe regional emergencies we have seen in the last several years, bridges open in New York and the like, creating severe dislocation on a local basis, but I think the balancing factor of free collective bargaining must survive, and we should not make incursions into it.

We are willing to attempt this one incursion, one experiment, in transportation, because I guess free collective bargaining has broken down in transportation. To the extent it can be resurrected, perhaps final offer or some impetus can be helpful. This is why we think an exception can be made, although opposing compulsory arbitration, and hoping that final offer selection leads in fact to free collective bargaining, the ultimate imposition of a solution proposed by one of the parties would rarely, if ever, come to pass.

As to the administration's second alternative, the question of the extension of the 30 days, we see little to be gained and we therefore follow the position of the American Bar Association which was adopted this year, by a special committee appointed to study the problem. Because psychologically the position is, if the parties have not been able to agree during the 80-day period, an additional 30 days simply prolongs the day of reckoning, in the same way as we have seen under the Railway Act, and absent any additional incentive. Simply more time will not make it work.

We do, however, recognize, as the President's bill has attempted, prior to the convening of the final offer selection panel, to give the executive branch an opportunity to try to resolve the matter. They have given the Secretary of Labor some time.

As opposed to that, we would propose and suggest that the President, at the end of the 80-day cooling-off period, be given an additional 10 days. If the President chooses to use other parts of the executive branch, such as the Secretary of Labor, that would be his prerogative. But basically it would be up to the President during the additional 10 days to try to get the parties to agree. However, so that time does not get away from us because there is no point in extending the time, the President, within the same 10-day period, and perhaps the pressure of that time would also force agreement, would essentially have one option, and that one option would be to go to the judicial branch rather than the executive branch as he proposes in his proposal now.

Under our proposal we submit the President should have the option of calling upon the Chief Justice of the U.S. Supreme Court, who immediately upon such telephone call or other call—but obviously it probably would be in writing—would convene a three-judge court.

The Chief Justice would have within his discretion to choose the members, however they must be chosen from among sitting courts of

appeal judges in the 10 circuits, plus the District of Columbia. It is our thinking—well, let me come back to why we think it is a preferable system in a moment, but let me just outline the system.

A decision of this three-judge court would have to be rendered within the 30 days, the same 30 days that the administration's bill contemplates, and an appeal from this court, not certiorari, but direct appeal to the U.S. Supreme Court be taken.

Let me first, before I talk about this judicial approach or the lay arbitrator final selection approach, let me discuss the second approach of the administration's second of the options under the administration's bill, partial operation of an industry.

We agree with the American Bar Association report of this year, that partial operation cannot work and is not a realistic alternative. The plan contemplates that partial operation takes place within a 30-day period.

The transportation industry is involved again and I must defer to those knowing more about the industry, but I think it is fairly self-evident that the industries in transportation are complex industries and there are many operating problems, and for a group of lay arbitrators within a 30-day period to decide how they are going to engage in partial operation would take a great deal of time. In order to reach that proposal or decision, they will have to call upon the very people who should be engaged in collective bargaining both on the side of management and labor.

So, what we fear is their vest energies will be used in trying to get a partial operation system, rather than trying to get a contract, and that is why we view partial operation as not a feasible alternative.

Insofar as final offer selection, we think the idea is excellent, and we think it is very innovative. However, we think there are certain shortcomings. It is because of those shortcomings we have made our suggestion for the study of this committee.

First, in final offer selection as presently drawn, there appears to be no parameters as to the input of what a union or a company can require in its offer and that can create some severe problems. For example—and, of course, the examples are as many as the mind can think of, but an example that comes to mind, one that is set forth in my paper, is that the union can be totally reasonable, and perhaps more reasonable in the minds of people, in terms of its economic proposals as they get down the line, and yet as part of its demand—as the union frequently will make the economic demands very reasonable to get certain valuable rights, as part of its demands it wants three nonvoting members on the company board of directors.

The question is, could lay arbitrators then select that union proposal? Of course, you can think of a lot of problems where you get a bad determination and a myriad of things being asked for, and the parties holding out for. The answer is, in the NLRB, the scope of bargaining is limited to the mandatory subjects of collective bargaining. The U.S. Supreme Court has before it this very term, a case in which it has granted certiorari. A complaint involving the Pittsburgh Plate Glass Co., about the subject of bargaining over retired employees. It questions whether for persons now retired, the union can be enabled to ask for additional moneys for them.

This is an appealing cause. These people were employed at a time when standards of living were lower and perhaps would have gotten more had they retired today. The question is in terms of opening the doors to "nonunit" people. The Supreme Court will have to decide whether that falls within the mandatory subjects of collective bargaining or not.

It is for this very reason that the courts ultimately are called upon to make interpretations, that we think that the court can handle this very well. This will be a part of the Taft-Hartley Act and the court in any of these bargaining relationships would ultimately be called upon to determine whether it is a mandatory subject of bargaining.

If they are silent, assuming the President's proposal or one like it is passed, and if silence remains with respect to the parameters of bargaining—I am sure that labor lawyers on both sides are inventive and will be quickly in the courts compelling in any case that what Congress intended was that the mandatory subjects of collective bargaining be written into the act. Then they will be using the courts and they will try to get in the courts any time they are not happy with the decision of the three-man panel on some theory that some other rule was infringed upon.

Of course, the merits of the contentions will then have to be heard, and no doubt the selection the panel had made would be held up pending decision, because surely the court would want to preserve its jurisdiction.

Ultimately, we would submit that the courts of appeal and the Supreme Court would be drawn into the conflict at a time when there probably would have to be some continuing injunctive relief, because presumably the parties would not be out on strike while the lawyers and parties are litigating.

Since the courts ultimately will be drawn in anyway, we would suggest the courts come in at an early stage.

Another aspect of the administration's bill which we find a problem with, and this is true of a number of the bills, is the failure to require that the arbitrators or group or panel—whatever we want to call them—give the reasons for their decision. In other words, they certainly will be fairminded men, and will do what they can to determine which of two agreements is better. This is a very difficult problem.

In many of the national strikes in the transportation industry and otherwise, the parties are frequently going down to the wire on thousands of unresolved issues, especially in the area of work rules. Determining what is right is a big task. To drop a hammer in favor of one side and say this is reasonable, would leave a lot of people unhappy, and raise perhaps some of the problems that are inherent when somebody else is writing the agreement.

If we are going to have this incursion into free collective bargaining, the parties are entitled to know why the arbitrators chose a particular final offer. That will take time. But there should be a provision requiring that the basis of the decision be set forth before judgment issues. The decisions could be printed or written some time thereafter, as it could be an involved procedure, which could take the court or panel some time.

The other question, the fundamental question, is the question of the lay arbitrators. Rather than getting into the question of fairness, be-

cause I am sure that fairminded men will be chosen and will be the better or best caliber of citizen we can find to solve the problem—Mr. LaGuardia testifying before the Senate Committee on Labor in 1947, at a time when he had national emergency strikes perhaps more severe than some we have today, and at a time before Taft-Hartley was passed, testified to this subject.

As you recall, going back to those years, President Truman vetoed the initial bill which had passed the Congress specifically on the way in which it dealt with the subject of national emergency strikes. There is much merit to what Mayor LaGuardia had to say, although I don't agree with all of his conclusions.

What he suggested is the LaGuardia plan, a three-judge labor court, a lifetime court, and that court would be of the stature of the U.S. Supreme Court.

He cautioned us, though, as to the problems he had seen in his lifetime as an author of the Norris-LaGuardia Act, and how the laws had changed and the problems he saw. One of the problems, of course, is reiterated in the hearings on the NLRB before Senator Ervin. That is, there are five NLRB board members and there is a lot of work. Board members have 60 attorneys writing opinions, and subpanels making decisions rather than the members, which the President with confirmation of the Senate, chose to pass on these decisions.

For that reason, he suggested that one of the problems in any tribunal is when you go through the problem of selecting the best man, and selecting the man of stature who will serve for a long period of time, you don't want a clerk to do the work, but you want him to do the work. You are buying his mind and ideas and judgment. So, one of the things he insisted upon in his plan is there be no clerks. The judges act by themselves.

The only problem LaGuardia saw with arbitration to resolve disputes is that many people engage in service on various boards to get personal benefits later on.

Unwittingly, or unwillingly, the fact is they are simply in for a short period of time as would be the panel proposed by the President. These people still are representing one side or the other. In fact in their mind they may be totally pure and Solomon-like, but certainly the parties, labor and management, spend a great deal of time talking about points of view on short time panels such as NLRB and for this reason I think Mayor LaGuardia thought they should be lifetime appointments.

We take his idea and turn it around, because what he proposed was compulsory arbitration and seizure and a number of other things, but the germ of the idea is this: Because one of the things that is not necessary, hopefully, is to have a lifetime tribunal or long tribunal because we don't anticipate there will be many national emergency strikes.

Even looking back to history, we have not seen many. The only problem is the few we have seen are very severe and they required the time of Congress to resolve them in the extreme.

So, we think to have sitting a tribunal which will twiddle its thumbs most of the time will result in not getting the highest caliber individual, because the highest caliber person will want to be challenged 24 hours a day, or certainly during his working days. Certainly

in the area of transportation strikes or in any area of emergency strikes we hope that would not be the case.

The next thing we wondered: Why do you finally take the idea to court? There are three alternatives in solving these problems in the three branches of government, and what we have seen up until the present in national emergency strikes and transportation, is the use of the legislative branch. You gentlemen are the ones who ultimately have had to resolve the problems.

The administration or some of the other bills suggests the executive branch. We think that these bills present a real problem because there, first of all, is more involvement in politics. There will always be the question, since we are imposing a solution, not only in terms of the selection of the people, but in terms of the way in which the matter is handled.

We would think that the administration would be very happy, or any President would be very happy, not to have to engage in selecting the three people, and it is for that reason that we have given the selection process of the panel to the Chief Justice of the U.S. Supreme Court.

We are very sympathetic and agree with the Chief Justice in many of his remarks, that the Court is so heavily burdened. Much of the problem is that much of the burden that exists in the U.S. Supreme Court is, in fact, caused by direct appeals to that Court. We would submit that while our approach would give some additional burden to the Court, it would occur so rarely—perhaps once every 5 years—that that burden is one that the Court should assume. For it would preserve the system of collective bargaining for the Court to so assume that burden.

In terms of the judges selected, the sitting courts of appeal judges, we would submit that those persons are extremely able to deal with this problem. They deal on a day-to-day basis with problems of labor relations. Therefore, I don't know the percent, I would venture almost 50 percent of the Courts of Appeal decisions today are labor decisions.

It comes about not only because of all decisions under the NLRA ultimately get to the court, but more than 50 percent of the decisions coming out of NLRB get to the courts. The courts deal with direct actions under the National Labor Relations Act, all matters of injunction suits, such suits as 301 actions, especially since the Supreme Court embraced the Boys Markets decision permitting parties to go into the District Courts and obtain damages of all sorts, not to speak of the area of equal employment opportunities where the courts deal with related areas.

All I am saying is that the persons selected to sit on the panel would perhaps be the most experienced people in the country to deal with the problem. They would be impartial as would no doubt the lay arbitrators, except there would be no possible segment of the community that could claim that those persons are partial, because they sit as lifetime judges.

To the extent there may be any problems, as parties will always feel some injustice, or like more due process, we would ask that the three-judge court render a decision giving statements of fact, conclusions of law and specifically that they operate only within the parameters of the mandatory subjects of bargaining, and they would have to decide within the 30-day period.

We would give the court general equity power or make it a court of original jurisdiction, with the only limit being it cannot engage in compulsory arbitration except that at the end of 30 days it must engage in a final offer selection. That is, as we conceive it, take the last offer of one of the parties, the last offer that the parties submit and choose between those two offers.

Now, during this 30-day period when the case is pending before the three-judge court, we would expect that that court and the judges of that court would have sufficient prestige to attempt on their own, as is the want of judges, in trying to settle cases every day, to try to resolve this dispute. They essentially then would be in the role of the mediator. They cannot impose a settlement, though, on the parties.

Presumably, the last offer might change in the 30-day period and maybe the court would never have to make the final offer selection.

The court also would probably have to engage in some injunctive action during this time. Presumably that 80-day cooling off period will have to be extended, and any injunctive relief would also wind up in the courts, and it would be proper for the court, while it is deliberating, to use injunctive powers.

Any decision of this court, whether in the injunctive area or on the merits, would be immediately appealable to the U.S. Supreme Court. Any cry of possible prejudice attributable to the selection of the three judges—and we don't think there would be any—but any question of acceptability would be cured by the ultimate decision made by the U.S. Supreme Court.

Thank you.

(Mr. Smetana's prepared statement follows:)

STATEMENT OF GERARD C. SMETANA ON BEHALF OF THE AMERICAN RETAIL FEDERATION

My name is Gerard C. Smetana. I am Labor Relations Counsel of Sears, Roebuck and Co. I appear here today on behalf of the American Retail Federation. I have had the opportunity to focus on the continuing problems of labor management relations as a contributing editor to "The Developing Labor Law" published this year by the Labor Law Section of the American Bar Association; in a statement I presented to the Senate Subcommittee on Separation of Powers, Committee on the Judiciary of the United States, during the hearings on Congressional Oversight of Administrative Agencies; in a statement I presented to the Special Subcommittee on Labor of the House Committee on Labor and Education, during the hearings presently being held before that Subcommittee; as a lecturer at the University of Chicago, Graduate School of Business Administration; and as a speaker at the Northwestern University School of Law Seventh Annual Corporate Counsel Institute.

The American Retail Federation, upon whose behalf I appear today, is an organization comprised of seventy-seven national and state retail associations. The membership of these associations consists of a wide variety of retail businesses ranging in size from a small local store to large national chains, representative of all aspects of the retail industry and totalling in excess of nine hundred thousand retailers throughout the country. The Employee Relations Committee of the American Retail Federation is drawn from the various retail associations which make up the Federation and from individual companies, both large and small, which are individual members of the Federation.

I am Chairman of a subcommittee of the Employer Relations Committee which has made a detailed inquiry into the wisdom of legislation dealing with strikes in the transportation industry which cause national emergencies. The product of my subcommittee's work was the development of a recommendation which was submitted to the full membership of the Federation. The membership overwhelmingly approved this recommendation which then became the official policy of the Federation. It is thus the position of a large segment of American employers that I present for your consideration today.

INTRODUCTION

The impact upon retailers of national emergency strikes in the transportation industry cannot be overstated. We are among the largest users of transportation services in the country. Nearly every item of every nature purchased by an ultimate consumer is purchased from a retailer. The vast majority of the goods we sell are brought to our places of business by public transportation. Therefore, any interruption in transportation services has an immediate adverse impact upon all retailers, and through them, all members of the public who shop at retail facilities.

Certainly the effect of a strike in the transportation industry which would be of sufficient magnitude to be considered a national emergency would, of necessity, have a crippling effect upon all members of the Federation and in some instances would preclude our members from staying in business. Notwithstanding this potential peril, the Federation has an abiding commitment to the concept of free collective bargaining and any mechanism which threatens the operation and effectiveness of that institution is a matter of utmost concern.

Therefore, as employers who stand imperiled by the effects of national transportation strikes, and as citizens who have a deep and continuing concern for the formulation and administration of national labor policy, we wish to advance our views with respect to the legislation endorsed by the President and offer some alternatives for consideration by this Committee.

THE NATURE OF THE PROBLEM

The devastating impact of national strikes in the transportation industry is generally acknowledged and there is a continuing concern that such a crisis will from time to time again confront the country. The current legislation which attempts to avoid such catastrophic economic upheavals simply does not work. The effect of such breakdowns in the administration and operation of our labor laws has required Congress on an *ad hoc* basis to pass emergency legislation to quell the chaos which results from nationwide transportation stoppages. While it is clear that a mechanism must be devised which will relieve Congress from this periodic burden and effectively preclude national transportation strikes, it must be recognized that the problems of the transportation industry are representative of the type of problems which create an imbalance in power in day-to-day labor relations.

As example, no one can deny that one of the major issues which has repeatedly caused disruptions in the railroad industry is the area of "work preservation". This problem, however, is not unique to the railroad industry. In the *National Woodwork* case,[1] a divided Supreme Court affirmed the Labor Board's decision which, in effect, repealed Section 8(e) of the Taft-Hartley Act, which sought to bar contracts which would prohibit any employer ". . . from handling . . . any of the products of any other employer . . .". The *National Woodwork* decision upheld the legality of a clause which the Carpenters Union had obtained in an agreement with a Philadelphia contractors association which provided that the contractors could not use pre-cut and pre-fitted doors. The effect of that specific decision in that particular case was that the savings which the building contractors could have achieved by purchasing prefabricated doors could not be realized by the contractor and through him, presumably, the customer. The end result, of course, is that the economy may not prosper as a result of improved technology whenever a labor organization is strong enough to negotiate a clause which prohibits increased productivity through the utilization of new or better technology. The ensuing frustration of the incentive for achievement, hindrance of economic development, and ultimate disservice to both labor and management emanate directly from an application and interpretation of the National Labor Relations Act.

We therefore urge that hearings be held before the appropriate committees of the House and Senate, at the earliest possible date, so that effective legislation can be considered by the Congress to deal with the wider problem of imbalance of power in labor management relations. Time and again both management and labor have voiced frustration and anger with the various problems in the administration of the National Labor Relations Act. Congress has not been

[1] 386 U.S. 612 (1967).

unmindful of these complaints and has from time to time made inquiry into the operations of the National Labor Relations Board.

Let us now return to the problem before us today. The American Retail Federation has undertaken an in-depth study of the President's proposed Emergency Strike Legislation and we take this opportunity to present our analysis for your consideration. Since our analysis compels rejection of certain of the Administration's proposals, we have undertaken to suggest affirmative proposals which, we believe, will best facilitate the objectives sought by the Administration. However, before presenting these proposals, it is only proper to place the specific problem of national transportation strikes in proper perspective.

It must be borne in mind that national strikes in the transportation industry are noteworthy for their severity rather than their frequency and therefore legislation predicated upon realistic concern cannot, with propriety, exceed the scope of the problem to which it is addressed. Legislative intervention which by its nature circumscribes the rights of the parties to formulate their own solutions through the collective bargaining process must be carefully drawn so as to insure that the rights of the parties are infringed upon no more than is absolutely necessary to the preservation of the public interest.

By so stating, we wish to underscore our belief that any legislative extension which infringes upon the rights of the parties in other than the transportation industry would not be an acceptable alternative to current collective bargaining practices. Similarly, we find insupportable legislative proposals which would extend emergency strike legislation to regional disputes and/or disputes in other industries. Historical precedent does not support a conclusion that such intervention is warranted to protect the public health and safety. Likewise, no philosophic rationale has come to our attention which would invite an abandonment of collective bargaining which has been for so many years in the past, and is today, the cornerstone of industrial relations in the United States.

An alternative that has been suggested in some quarters to deal with national emergency strikes is compulsory arbitration—we strenuously oppose any such alternatives. With whatever trapping such a proposal may be advanced, the end result is always that a third party substitutes his wisdom for that of the parties who must live under the conditions specified in the arbitrator's edict. Such a procedure makes a mockery of the bargaining which precedes the compulsory arbitration. It would require workers to give up the right to strike and employers the right to manage.

Notwithstanding our fundamental opposition to variances in the free collective bargaining process, such as those suggested in all schemes of compulsory arbitration and those which would extend emergency strike legislation to industries other than transportation, we are not unmindful of, or in disagreement with, the current need for innovative thought addressing itself to the problems of the transportation industry. Let us now turn to the President's proposal and specific recommendations which the Federation feels can more fully solve potential problems in that industry.

The Problems With the President's Proposal and the Federation's Affirmative Answer

A. THE PRESIDENT'S PROPOSAL

The mechanics of the President's proposal are relatively simple. The Act would grant to the President new authority to deal with national emergency disputes in the railroad, airline, maritime, longshore, and trucking industries. It would operate in the following fashion:

1. The Bill would abolish the emergency strike provisions of the Railway Labor Act (which now govern railway and airline disputes) and make all transportation industries subject to the "national emergency" provisions of the Taft-Hartley Act.

2. The Bill would amend the Taft-Hartley Act to give the President the following three new options in the case of any national emergency dispute in the transportation industry which is not settled in the 80-day "cooling-off" period.

(a) The President could extend the "cooling-off" period for an additional 30 days.

(b) The President could empanel a special Board to determine if partial operation of the industry is feasible, and if so, to set out the boundaries for such an operation. The affect of such a determination, which would, of course,

result in a partial strike or lockout, could not extend beyond one hundred and eighty (180) days.

(c) The President could invoke a "final offer selection" alternative. This alternative would operate to provide that if the parties have not reached agreement after expiration of the "cooling-off" period, they be directed to submit their final proposals for a contract to the Secretary of Labor. After the submission of these offers, a mandatory five-day period of bargaining would take place during which the services of the Secretary of Labor would be available for purposes of mediation. If, at the end of this five-day period no agreement had been reached, the parties would be given two additional days to select, by mutual agreement, a three member Final Offer Selection Board. If, within the two days the parties were unable to reach accord on the composition of the Board, then it would be selected and empaneled by the President. The sole function of the Board would be to select, without modification or attempts at mediation, one of the previously submitted offers. This choice must be made within thirty days from the President's initial direction to the parties to submit their final offers. The offer thus selected would then represent the terms of the collective bargaining agreement governing the parties.

B. THE FEDERATION'S ANALYSIS OF THE PRESIDENTIAL PROPOSAL

1. Abolition of the Emergency Strike Provisions of the Railway Act

The Federation agrees with the Presidential recommendation seeking to abolish the emergency strike provisions of the Railway Labor Act. We further agree that the railways and airlines which are presently subject to that provision of the Railway Labor Act should be placed under the national emergency provisions of the Taft-Hartley Act. The affect of such legislation would be to insure a uniformity in the treatment of national emergencies in all aspects of the transportation industry. Further, railroads, the most troublesome industry from the standpoint of national emergency disputes, would thereby be regulated under the provisions of the Act which has historically proven to be most effective in coping with such situations.

2. Extension of the "Cooling-Off" Period

With respect to the President's proposal to allow for an extension of the "cooling-off" period for an additional thirty days, we find ourselves in substantial agreement with the position asserted by the American Bar Association, Special Committee on National Strikes in the Transportation Industry. That Committee opposed such an extension on the ground that ". . . the extension of the 'cooling-off' period is likely to be unnecessary or, if used, to be ineffective." As the American Bar Association Committee pointed out, if the parties are close to agreement, they would probably agree to extend the no-stoppage period. On the other hand, if they are far apart at the end of the 80-day "cooling-off" period, it is unlikely that an additional thirty days at that stage would produce an agreement. However, as specifically set forth in the Federation's proposal hereinafter, we do agree that a 10-day "cooling-off" period should be provided to the President prior to convening of the Final Offer Selection Tribunal.

3. Partial Operation of an Industry

Similarly, we oppose the alternative recommended by the President for the empaneling of a special board to determine if partial operation of the affected industry is feasible. Again, our opposition parallels that articulated by the American Bar Association. These oppositions may be summarized as follows:

(a) If the special Presidentially-appointed board determines that partial operation is not feasible, then the President is not authorized to invoke any other procedure to handle the dispute. This lack of alternative could well subject the nation to an actual stoppage which is the very result which the invocation of the procedure sought to avoid.

(b) The relatively short period of time granted to the special board for determination of the feasibility of partial operation necessarily entails the risk of either a determination to employ that procedure without adequate consideration of the difficulties involved or rejection of the procedure because of inadequate time to identify and deal with such difficulties.

(c) The invocation of such a procedure would, in all probability, restrict the parties who will spend the thirty days arguing the merits, demerits, and procedures for partial operation while they could be bargaining.

4. Final Offer Selection

The other alternative proposed by the President involves "final offer selection". Conceptually, this alternative has significant appeal. There are, however, three basic areas in which the Administration's recommendation for utilization of the "final offer selection" process can and should be materially strengthened:

(a) The Administration's proposal establishes no parameters governing what matters could and could not be included in a final offer. Therefore, for example, a union might make an offer which in every other regard was fair and reasonable, but which included a provision requiring that three of its members be seated as non-voting members of the board of directors of the company with which it was bargaining. If, in this example, the company's offer were less fair and reasonable, then presumably the union's final offer would be selected and would become the contract between the parties. Such a result is not consistent with what the union could obtain at the bargaining table. A failing in the Administration's proposal is to limit matters which become subject to final offer selection to mandatory subjects of collective bargaining.

(b) The President's recommendation for "final offer selection" would transfer solution of national emergency strike problems from the Legislative Branch of the Government to the Executive Branch. We would suggest consideration of the Judicial Branch to fulfill this responsibility. Fiorello La Guardia, in testimony before the Senate Committee on Labor and Public Welfare on March 18, 1947, when the problem of national emergency strike was then being considered, raised some words of caution in the use of lay arbitrators to resolve these problems which are very pertinent today. His suggestion at that time was the creation of a three-man lifetime labor court designed to have the stature of the Supreme Court. It was his position in reviewing the idea of lay arbitrators that the judges not only be appointed for long terms, but be prohibited from returning to their previous prior endeavors or in any way involving themselves for a long period of years in the labor-management equation. We agree with this analysis of Mayor La Guardia. We do not agree that a lifetime court is required and we do not agree that it should have the power of compulsory arbitration, but some use of the Judiciary to overcome the problem of the acceptability of the decision of three laymen in resolving a national emergency dispute must be entertained. We see no need to create a special Judiciary. We would suggest that we may simply turn to the existing Courts of Appeal judges who in their day-to-day lifetime work consider, by way of appeal, a vast number of labor matters arising from the Railway Labor Act, the National Labor Relations Act and collective bargaining agreements.

(c) The Administration's proposal does not provide for a statement, of reasons as to why the chosen final offer was selected or provide review of the panel's decision. Even if the Administration's proposal were amended to require that the lay arbitrators limit the area of inquiry to the mandatory subjects of bargaining and give reason why the last best offer they selected was the most reasonable, the dissatisfied party would very likely seek some legal avenue of review not only of the judgment but also of whether or not what the arbitrator considered to be outside the scope of mandatory bargaining was correct. To achieve the stature and respect of final solutions in matters of national emergencies, we believe that utilization of the United States Supreme Court as a last resort is imperative. We would anticipate that the circumstances under which the court will be compelled to act would be extremely rare. A further failing in the Administration's proposal is that no provision is made for appropriate injunctive relief to the parties during the period when the various final offers are being considered by the selectors. While the proprieties of the parties' position are being considered, some avenue for maintaining the status quo after the 80-day cooling-off period must be provided.

(d) We agree with the innovative concept of final offer selection and that the selection must occur within a fixed period of time. We would also agree that thirty days is a reasonable period.

C. THE FEDERATION'S PROPOSAL: FINAL OFFER SELECTION BY THE JUDICIARY

The foregoing analysis has led us to the following affirmative recommendation which we submit for your consideration. If the parties are still in disagreement at the conclusion of the 80-day "cooling-off" period, the President shou

given the option of a short-term extension of the "cooling-off" period not to exceed ten days during which he could use his persuasive powers to aid the parties in reaching agreement. During this period, the only other option the President will have is to call upon the Chief Justice of the United States Supreme Court, who in turn shall promptly select and convene a three judge court composed of three active judges of the Courts of Appeal of the United States. This three judge court should sit as a court of original jurisdiction. It should have general equity powers enabling it to assist the parties in mediating the dispute and with the power to issue whatever injunctive relief is necessary consistent with sound jurisprudence. This court should be imbued with further limited power, if the parties are not able to agree, to render a judgment that will impose upon the parties the last offer of either of the parties. Such a judgment should be rendered within thirty (30) days from the date upon which the court is convened. In making such a judgment, it should be incumbent upon the court to choose whichever offer is most reasonable under all of the circumstances. In choosing the most reasonable offer, a court should be specifically limited to the consideration of only mandatory subjects of collective bargaining under the National Labor Relations Act. It should be further provided that the court must issue findings of fact and conclusions of law upon which it has based its judgment on selecting the particular final offer. All decisions of this three man court shall be immediately appealable to the Supreme Court of the United States.

CONCLUSION

We wish on behalf of one of the largest transportation users in the United States to thank the Committee for this opportunity to participate in your deliberations seeking to find a solution to the problem of national transportation strikes. We believe that our plan for final offer selection by the Judiciary can form the basis for a lasting solution to this problem which confronts us all.

Mr. DINGELL. Thank you very much, Mr. Smetana.

Mr. Harvey?

Mr. HARVEY. Mr. Smetana, the chairman advises us of sharp limits on the time that we have left, so I will limit myself to one question.

I have listened to your statement and read the statement which you submitted as well. But I see no mention in it really of selective strikes, and I am not certain what your advice to this committee is. Are you advising us that we should, No. 1, prohibit selective strikes, or No. 2, instead of prohibiting them, restrict them or define them, limit them in some way, or No. 3, that we should leave them the way they are.

Mr. SMETANA. It would be our position, perhaps while the subject of selective strikes is of recent occurrence in view of the recent Supreme Court decision, or at least refusal to decide, as I recall, basically we don't see it to be a problem, not because it isn't a problem, in fact, but because under our proposal and I think most of the proposals, the fundamental or the threshold decision is whether or not what is involved is a national emergency.

Therefore, before the 80-day cooling off period is invoked, a national emergency would have to be declared, and it would be a question of fact up to the President and the courts to determine whether in that situation we have a national emergency.

For example, in the most recent selective strike, I do not doubt that one of the compelling factors for the parties to settle, perhaps in this case the 80-day cooling off period was not involved because it was not under the NLRB, but it could have been. Certainly the union knew if it didn't settle the matter quickly, the administration was going to be up here before you gentlemen with another emergency ad hoc bill to try to resolve the matter, and also they knew if they didn't settle the strike, any positions or any credibility they have before this committee could be severely impaired.

So, therefore, the threat of what amounts to really a declaration of national emergency, because it would have been necessary before legislation could have been passed, was there, and I would think in any future selective strikes that that same threat would exist, and at the time it is declared to be a national emergency, it could be dealt with as all other national emergencies in transportation.

Mr. HARVEY. I have other questions, but I will abandon them because of time requirements.

Mr. DINGELL. Thank you, Mr. Harvey.

Mr. Metcalfe?

Mr. METCALFE. I have no questions, thank you.

Mr. DINGELL. Mr. Kuykendall?

Mr. KUYKENDALL. I have just one main remark, and I am not saying it as a question.

I think those of us who are very seriously involved in watching the Federal courts run a thing called the busing of school children, we doubt very seriously if we want the Federal courts running anything else as they are running things right now. So the same judges are not political, just remember who appoints them.

Mr. SMETANA. If I may be heard, as far as the judiciary, certainly the judges do deal on a day-to-day basis with labor relations, and the Supreme Court deals with the very subjects that are involved in the nature of the dispute that could possibly be involved in any conceivable dispute, because the case goes to the court in one form or another, in fact, many labor matters get up to the court and of course the court is able to deal with these matters. Certainly there are problems and they could be appropriately resolved if there are problems in the labor laws, but in terms of the courts handling it quickly, I think they can, and in terms of acceptability, the courts would have greater acceptability than three lay arbitrators, because the arbitrators would always go back to their previous position and listen to representation of labor and management respectively.

Mr. DINGELL. Mr. Adams?

Mr. ADAMS. I have the problem that your suggestion, in effect, takes us back to where we were before the Norris-LaGuardia Act by having the parties enjoined by the courts during a period of time while the courts decide on the fundamental contract and doesn't that bother you?

Mr. SMETANA. It bothers me to this extent: We have a serious problem in the transportation industry which I think has to be resolved. I would think that the method of resolution is very much the same, whether you have the court or the three lay arbitrators, except the problems that we see with the labor arbitrators would be solved. They would be solved by the system that we propose, namely that there be parameters and reasons given.

Furthermore, we would think that the same result, occurs whether or not you actually write the courts into it, because the parties will ultimately go to them to contest what comes out of the arbitration decision in one form or another.

Mr. ADAMS. Now, is the court going to only be able to select the offer as made by one of the parties, or can they pick the parts they want to have of the offer, as in page 19 of your statement, and make a final decision as to what they want and by "they" I mean the courts?

Mr. SMETANA. No, it would be the same in terms of final offer selection, the same as I understand the administration's bill, that they cannot pick and choose and they must take the last offer of the parties and can only choose between those two offers and state why they have so chosen.

Mr. ADAMS. Really, there is no judicial determination of the terms of the contract at all. It is simply a selection, and you prefer three judges rather than three lay arbitrators making a selection of what the parties have put up?

Mr. SMETANA. Yes. I prefer that selection made in that way because I think there would be greater acceptability in terms of the decision. I think ultimately the questions, or collateral issues, that arise, whether or not what they have decided is, in fact, for example, within the scope of bargaining, would be one that would come before the courts anyway, and it would save a lot of time if it came before the courts immediately.

Mr. ADAMS. I have other questions, but I will deal with them on the floor.

Mr. DINGELL. Mr. Skubitz?

Mr. SKUBITZ. Thank you, Mr. Chairman.

Mr. Smetana, do I understanding your testimony to be that you are a strong believer in the collective bargaining principle, but because of the impact that transportation has in our total economy, you are willing to experiment with this new procedure? Is that correct? But you don't want to apply it to other industries?

Mr. SMETANA. That is essentially correct. The reasons are that the only area where we have seen the problem extreme is in this area, and this is an extreme solution, and therefore an extreme solution should be no larger than the problem that is being solved, and therefore we don't think we should be solving problems we don't have.

Mr. SKUBITZ. You don't believe that a strike in the steel industry or coal industry could have the same impact?

Mr. SMETANA. It has not happened so far. The Congress has had to deal with national emergencies in transportation.

Mr. SKUBITZ. We had strikes in the steel industry that certainly affected the national interest.

Mr. SMETANA. There are certainly other problems.

Mr. SKUBITZ. That is not the question. I know that.

Mr. SMETANA. The impact is not as severe and immediate. The problems in transportation would affect national security. In the steel industry, for example, it is easy to predict a strike. The people generaly buy in advance so the effects of a steel strike are not as immediate and are very much secondary. The effects of the transportation strike are primary and immediate.

Mr. SKUBITZ. You heard the previous witness testify that the effects of a transportation strike on his industry would be tragic. I think that the impact of a steel strike would have the same effect. I think it is true in the automotive industry. The point I am getting at is that any strike which affects the national interest, is just as serious as a strike in the transportation industry. If your suggestion is good it should be applied to all segments of our industrial system.

Are you saying to us that it is good for transportation but don't apply it to Sears-Roebuck?

Mr. SMETANA. No, we have thought about this problem and this is perhaps one of the most difficult aspects, and I think I opened my remarks to that effect, of dealing with a special industry problem, but we feel that the problem in this industry is so severe, by history, and the existing mechanisms have not worked, and legislative intervention is not desirable, that another system for dealing with this problem should arise and we think the other problems are not as severe and not as pressing and therefore don't deserve solution today.

Mr. SKUBITZ. Thank you.

Mr. DINGELL. Mr. Metcalfe?

Mr. METCALFE. I have no questions.

Mr. DINGELL. Mr. Smetana, I have a question that concerns me.

Is this a case or controversy within the meaning of the judicial article of the Constitution so as to empower Federal courts to perform this kind of service as Federal courts?

Mr. SMETANA. Well, I would think that if the Congress has the power, and it does have, to pass something as the National Labor Relations Act, where it gives statutory jurisdiction to the courts——

Mr. DINGELL. The Constitution limits jurisdiction to the Federal courts to handle cases or controversies.

Now, I am asking, are these cases or controversies within the meaning of the Constitution?

Mr. SMETANA. I would certainly think they would have to be. I would say they would be. They would certainly be under the commerce clause.

Mr. DINGELL. I think you had better read the judicial clause. It has been a long time since I have, but I have some doubts as to whether or not this is imposing a nonjudicial function on the Federal courts and, as such, is an unconstitutional act by the Congress. This is something you should give consideration to.

Mr. SMETANA. I will be happy to do that.

Mr. DINGELL. I am not satisfied either way, but I think you have a nice question that has to be resolved before this committee goes forward on this kind of question, but I would like really something from you in response on this particular point, since you are the originator of it and best familiar with the matters you have set forth.

Mr. SMETANA. I will be happy to study it and present a supplement to our statement or brief.

Mr. DINGELL. Not a brief, just some comment.

(The following letter and attachment was received for the record:)

AMERICAN RETAIL FEDERATION,
Washington, D.C.

Hon. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: On September 14, 1971, I had the honor to appear before your Subcommittee and present the testimony of the American Retail Federation, relative to contemplated emergency strike legislation in the transportation industry.

In that testimony, we endorsed legislation which would provide for a final-offer selection process utilizing the Federal Judiciary. During my testimony, Congressman Dingell inquired as to whether it was constitutionally permissible for the Congress to invest the Federal Judiciary with the jurisdiction contemplated by the legislation which we favor. Congressman Dingell requested that we research

that point. Accordingly, we are herewith enclosing a Memorandum which we believe fully explores all aspects of the question.

As our Memorandum points out, the Congress has full power under Article III of the constitution to create a judicial tribunal in the form and for the purpose indicated in my testimony. Comparable courts for substantially similar purposes have in the past been established by Congress. As pointed out by the Court in *United States v. United Steel Workers of America*, 202F. 2d132 (CA², 1953) an action brought by the United States on behalf of the general public to protect the public from an actual or threatened strike which creates the possibility of a national emergency satisfies the constitutional requirement of "case" or "controversy."

We hope that the enclosed Memorandum will aid the Subcommittee in its deliberations.

Sincerely yours,

GERARD C. SMETANA.

MEMORANDUM OF OPINION IN RESPONSE TO INQUIRES OF THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS CONCERNING THE LEGAL AND CONSTITUTIONAL SUFFICIENCY OF THE PROPOSED LEGISLATION FOR RESOLUTION OF NATIONAL EMERGENCY DISPUTES IN THE TRANSPORTATION INDUSTRY

(Presented by Gerard C. Smetana on behalf of the American Retail Federation)

I. INTRODUCTORY

On September 14, 1971, Gerard C. Smetana appeared before the House Committee on Interstate and Foreign Commerce, Subcommittee on Transportation and Aeronautics, on behalf of the American Retail Federation, to present testimony concerning the President's proposed legislation for dealing with national emergency disputes in the railroad, airline, maritime, longshore and trucking industries, and as a part of that testimony presented the American Retail Federation's proposal for "final offer selection" by the judiciary rather than by the executive branch as proposed by the President. During the course of that testimony Congressman John Dingell raised questions concerning the existence of any constitutional impediments to implementation of the proposed legislation, and inquired particularly as to whether or not an action brought pursuant to the provisions of the proposed legislation would satisfy the "case or controversy" requirement of the Constitution of the United States for actions brought before the federal judiciary. This memorandum is submitted pursuant to the request of the Subcommittee and in response to those questions.

By way of summary, the Federation's proposal provides that at the conclusion of the Taft-Hartley eighty day "cooling-off" period, the President can extend said "cooling-off" period for a maximum additional period of ten days, during which time the President could use his persuasive powers to aid the parties in reaching agreement. Thereafter, in the event the parties fail to voluntarily settle the dispute, the President, either during the 10-day extension or immediately upon its conclusion, shall call upon the Chief Justice of the United States Supreme Court, and request the Chief Justice to promptly select and convene a three judge court composed of three active judges from any of the existing Circuit Courts of Appeals of the United States. Upon the convening of such court, the Attorney General of the United States shall file a complaint with the three judge court with notice and service of process of the complaint made upon the parties to the dispute. The complaint shall allege that the actual or threatened strike or lockout gives rise to a national emergency which, if permitted to occur or continue, would imperil the national health, welfare, safety or interest. This three judge court would sit as a court of original jurisdiction with general equity powers, enabling it to assist the parties in mediating the dispute and to issue necessary injunctive relief to prevent either party to the dispute from resorting to self-help. Moreover, the court shall have the power to compel the parties to the dispute to submit to the court, in writing, their final proposals for a contract concerning the rates of pay, wages, hours of employment and other conditions of employment, the totality of which shall serve as if it were the collective bargaining agreement between the parties. If, however, the court is unable to successfully mediate a voluntary resolution of the dispute, it shall have the further power to render a judgment within a period of time not to exceed thirty days from the date it is initially convened, imposing upon the

parties the "final offer" of either of the parties. The decision and order of this three judge court shall be directly reviewable in the Supreme Court of the United States by appeal.

A. Issues

Three legal questions are suggested as a consequence of the proposed "final offer selection" by the Judiciary, none of which present any legal or constitutional impediment to the implementation of the proposed legislation:

(1) Whether Congress can constitutionally constitute a three judge court in the manner proposed and invest said court with original jurisdiction to hear the matter and resolve the dispute by the court's selection of one of the "final offers" submitted by the parties;

(2) Whether the dispute before the three judge court so constituted is properly within the jurisdiction of the United States judiciary pursuant to Article III of the United States Constitution;

(3) Whether the Chief Justice of the United States can be invested with the authority to select the three circuit court judges to sit on the court.

II. CONGRESS HAS THE POWER TO ESTABLISH INFERIOR FEDERAL COURTS—EITHER CONSTITUTIONAL OR LEGISLATIVE

Article III, Section 1 of the Constitution of the United States provides:

"The judicial power of the United States shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Other than the creation of the Supreme Court of the United States, the Constitution does not itself establish any inferior federal courts. Specifically, the Constitution provides that it is the function of Congress to create all other federal courts deemed necessary. In the exercise of this function, Congress has the authority and has exercised its authority to create "inferior federal courts." The most common example of courts created pursuant to the constitutional authority granted Congress are the 93 presently existing United States District Courts and the United States Circuit Courts of Appeals. Such courts derive their powers directly from Article III of the Constitution and are alternatively designated as "constitutional" or "Article III" courts. The judicial power of these courts is limited by Article III, Section 2, Clause 1 of the Constitution to consideration only of "cases" or "controversies".[1] Provided the constitutional requirement of "case" or "controversy" is met, the Constitution presents no obstacle to (1) the creation by Congress of any inferior federal courts, or (2) the investing of courts so created with whatever jurisdiction it deems necessary and appropriate, *Lackey v. Phillips*, 319 U.S. 182 (1943). In addition, Congress may grant, withhold, restrict, modify, or withdraw entirely such jurisdiction in its discretion and may vest exclusive, concurrent and/or original jurisdiction in any federal court over causes arising under a federal statute. *Taylor v. Brown*, 137 F.2d 654 (Em. App. 1943).

However, judicial interpretation of Congress' authority to create courts have upheld the power of Congress to create and establish courts whose considerations do not conform to the constitutional requirement of "case" or "controversy". Such courts are commonly designated as "Legislative courts" and neither derive their authority from, nor are restricted by, the provisions of Article III, Section 2, Clause 1, of the Constitution.

Constitutional courts differ from Legislative courts in two major respects. First, judges of Constitutional courts receive the protections afforded by Article III in that they hold their offices during good behavior and their compensation cannot be diminished during their continuance in office. Judges of Legislative courts do not enjoy this constitutional protection and Congress can, in its discretion, grant judges of Legislative courts whatever tenure and remuneration it deems appropriate and necessary in aid of the purposes for which the court was established and similarly, can reduce such tenure and remuneration in like manner. *Williams v. United States*, 289 U.S. 553 (1953); *McAllister v. United States*, 141 U.S. 174 (1891).

The second fundamental distinction between the two courts is that Constitutional courts, unlike Legislative courts, can be invested with and exercise only

[1] The constitutional requirement restricting jurisdiction of the federal judiciary system to adjudication of "cases" or "controversies" is discussed, *infra*, at pp. 14–24.

judicial power invoked in a justiciable case or controversy. They cannot render advisory opinions or consider cases which, by their nature, are moot or present only hypothetical questions for determination. *Muskrat v. United States*, 219 U.S. 346 (1911); *In re Summers*, 325 U.S. 561 (1945); *United States* v. *I.C.C.*, 337 U.S. 426 (1949).

A further derivative distinction exists between the two types of courts flowing from the constitutional restriction placed on constitutional courts to hear only justiciable cases or controversies. The judgments of constitutional courts are not subject to legislative or executive revision. See, *Hayburn's Case*, 2 Dall. 409 (1792) and *Old Colony Trust v. Commissioner*, 279 U.S. 716 (1929). This rule, though not directly expressed in the Constitution, has ancient antecedents and was implemented in order to preserve the constitutionally mandated separation of governmental functions. Its effect is to forbid the imposition by any other branch of government of non-judicial functions on constitutional judges, *Hayburn's Case, supra*. However, since, as described, Legislative courts are not restricted to adjudication of only justiciable cases or controversies, there exists no similar restriction upon them from performing whatever functions Congress legislatively provides. *Williams v. United States*.

The dichotomy created between these two distinct types of courts originated in *American Insurance Co. v. Canter*, 1 Pet. 511, 7 L. Ed. 242 (1828) over the question of the status and jurisdiction to be granted to the congressionally created courts for the then territory of Florida. The United States Supreme Court was presented with a practical problem of how to uphold the jurisdiction of the courts in the territory in view of the congressional restriction imposed upon the judges of the territorial courts that they hold office for only four (4) years and not for life as provided in the Constitution. The Supreme Court could not establish them as Constitutional courts without violating the express Constitutional mandate that justices retain permanent tenure and protection from diminution of salary. Nor could the court *sua sponte* override Congressional intent and grant them these protections.

In resolving this dilemma, the court referred to Article IV, Section 3, Clause 2, of the Constitution, which relates to the powers of general sovereignty and Chief Justice Marshall declared:

"These (territorial) Courts, then, are not constitutional courts, in which the judicial power conferred by the Constitution on the general government can be deposited. They are incapable of receiving it. They are Legislative Courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3rd Article of the Constitution, but is conferred by Congress, in the execution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States . . ."[2]

Although Legislative courts were initially created to provide a judicial system to be utilized in the territories of the United States, the uses to which Legislative courts were subsequently put were not so restricted. In *Ex parte Bakelite Co.*, 279 U.S. 438, 451 (1929), the Supreme Court held:

"Legislative courts also may be created as special tribunals to examine and determine various matters, arising between the government and others, which from their nature do not require judicial determination and are not susceptible of it. The mode of determining matters of this class is completely within congressional control. Congress may reserve to itself the power to decide, may delegate that power to executive officers, or *may commit it to judicial tribunals.*" (Emphasis supplied)

Subsequent to the Supreme Court's decision in the *Canter Case*, Congress has exercised its authority to create legislative courts. For example, in response to legislative agitation which followed the creation of the Interstate Commerce Commission in 1887, in 1910 Congress created the Commerce Court[3] and invested it with original jurisdiction to determine the validity of most orders issued by the Interstate Commerce Commission. In creating the Commerce Court, a Legislative court, Congress withdrew and thus diminished the jurisdiction over such matters previously invested in the United States Circuit Courts of Appeals, Constitutional courts, and provided that appeal from the decisions of the Commerce Court could be taken directly to the United States Supreme Court.

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[2] *American Inc. Co.* v. *Canter*, 1 Pet. 511, 546, 7 L. Ed. 242 (1828).
[3] Act of June 18, 1910, Ch 309, 36 Stat 539.

Another example of congressional exercise of its powers to create Legislative courts can be found in its creation of Consular courts in which Congress invested American ministers and consuls with extensive jurisdiction over American citizens abroad in matters of criminal and civil jurisdiction.

Since the distinction between Legislative and Constitutional courts primarily involves only the types of matters allowed to be heard and the tenure and salary of judges sitting on each respective type of court, as opposed to the required qualifications of such judges, the assignability of judges from Constitutional courts to Legislative courts and *vice versa* has been held valid. *In Glidden Co. v. Zdanok*, 370 U.S. 530 (1962), the Court held that active and retired judges of the Court of Claims and the Court of Custom and Patent Appeals [4] could validly be assigned to sit as members of the Federal District Courts and United States Circuit Courts of Appeals. In *Irish v. United States*, 225 F.2d 3 (CA 9, 1955) the court upheld the assignment of a judge from the territorial district court of Hawaii—a Legislative court—to sit as a justice on the United States Circuit Court of Appeals for the Ninth Circuit—a Constitutional court.

Thus, within the framework of the proposed legislation, there is no impediment to the utilization of active judges from among the existing Circuit Courts of Appeals to sit as judges on the three judge court provided in the legislation. This conclusion is valid regardless of whether the court so created is deemed Legislative or Constitutional.

With particular regard to Constitutional courts, as described, Article III, Section 1, grants Congress the authority to create inferior federal courts. However, Congress cannot confer upon these courts any jurisdiction beyond the cases to which the judicial power of the United States extends pursuant to Article III, Section 1 and Article III, Section 2, Clause 1 of the Constitution. *International Brotherhood of Teamsters, Local 25 v. W. L. Mead, Inc.*, 230 F.2d 576 (CA 1, 1956).

Therefore, provided that the constitutional requirement of "case" or "controversy" is met, there is no restriction on the type of Constitutional court Congress can create, the life of such court, the composition, or the jurisdiction granted such courts.[5] While we have become accustomed to a particular type of court created by Congress with particularly defined jurisdiction and composition, Congress is not legally or constitutionally restricted to establishment of these "historically standard" courts. For example, Congress deviated from this historical standard when it created the Emergency Court of Appeals.

As a result of World War II, Congress passed the Emergency Price Control Act of 1942 [6] which, *inter alia*, created a new Constitutional court entitled the Emergency Court of Appeals.[7] Pursuant to the terms of the enabling act, the Chief Justice of the United States Supreme Court was required to appoint three (3) or more judges from among the then constituted Federal District Courts or United States Circuit Courts of Appeals to compose the Emergency Court of Appeals. The court so constituted was granted exclusive equity jurisdiction to determine the validity of regulations, orders and price schedules issued pursuant to the Emergency Price Control Act, subject to review by certiorari in the Supreme Court. The Emergency Court of Appeals had no powers except as specifically granted by Congress and its jurisdiction to hear and decide cases was strictly limited by Congress. See, *In re Recommendation of Local Advisory Board for Miami Defense—Rental Area for Decontrol of Miami Beach*, 172 F. 2d, 726 (Em. App., 1949).

Notwithstanding the limitations placed by Congress on the court's exercise of its jurisdiction, the constitutionality of the Emergency Court of Appeals and the Act which created it (including the requirement that the Chief Justice of the United States select the judges to sit hereon) was upheld. In *Yankus v. United States*, 321 U.S. 414 (1944) the Court in passing on its constitutionality, stated:

"This (exclusive equity jurisdiction) was accomplished by the exercise of the constitutional power of Congress to prescribe the jurisdiction of inferior federal courts to determine federal questions and to vest that jurisdiction in a single court, the Emergency Court of Appeals."

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[4] In 1956 and 1958, respectively, Congress declared both these courts, which had formerly been adjudged as legislative courts by the Supreme Court, to be constitutional courts. *Glidden* held that there was not impediment to the appointment of judges of these courts to constitutional courts notwithstanding the fact that they had formerly sat as legislative justices.

[5] *Flast* v. *Cohen*, 392 U.S. 83 (1968).

[6] Act of January 30, 1942, 56 Stat. 23.

[7] 56 Stat. 32, 50 U.S.C. App. Section 924.

Therefore, consistent with its constitutional prerogatives under Article III, Section 1, Congress can expand or withdraw the current jurisdiction of the existing Circuit Courts of Appeals, create new Circuit Courts in any and all the states and Congress' power to "ordain and establish" also carries with it the power to prescribe and regulate the modes of proceedings in such courts, *Livingston v. Story*, 34 U.S. 632 (1835). Further, consistent with this power, Congress can enact legislation providing that in any given class of cases or case of special character (such as that involved in the proposed national emergency strike legislation) any existing Circuit Court, or newly created Circuit Court, can be given the authority, upon valid notice and service of process, to compel all necessary parties to appear before it. *United States v. Union Pacific Ry. Co.*, 98 U.S. 569 (1879).

Thus, based on the foregoing, a Congressional determination to create a three judge court selected by the Chief Justice of the United States from among the active judges of the existing United States Courts of Appeals, and to invest the court with original equity jurisdiction to hear and resolve national disputes in the transportation industry in the manner provided in the proposed national emergency strike legislation, is a valid exercise of Congressional power and within its constitutional powers to perform.

Having determined that the power of Congress to create the court is not impaired by applicable legal or constitutional principles, the only question now presented is whether such court shall be designated as a Constitutional or a Legislative court. Apart from considerations of policy, the resolution of this question is dependent upon an examination of the matters with which the court will be presented and a determination of whether or not such matters present the court with a justiciable case or controversy and thereby satisfy the constitutional requirement for creation of Constitutional courts.

III. ACTIONS BROUGHT BEFORE THE THREE JUDGE COURT, CREATED PURSUANT TO THE PROVISIONS OF THE PROPOSED LEGISLATION SATISFY THE CONSTITUTIONAL REQUIREMENT OF CASE OR CONTROVERSY

At the outset, it should be noted that the following discussion concerning whether action brought in the courts pursuant to the provisions of the proposed legislation satisfies the constitutional requirement of a case or controversy is rendered solely in support of the proposition that the three judge court provided for in the legislation can be a "constitutional" court capable of adjudicating disputes arising as a result of national disputes between labor and management in the transportation industry and resolving such disputes in conformance with the provisions of the proposed legislation. Since there is no constitutional restriction placed on the jurisdiction of "legislative courts" similar to that placed on "constitutional courts", Congress is free to establish the proposed court as a Legislative court irrespective of whether the diputes before it satisfy the constitutional case or controversy standards.

Article III, Section 2, Clause 1 of the United States Constitution restricts the jurisdiction of the federal judiciary system, including the Supreme Court, to adjudication only of "cases" or "controversies".

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

By the terms of the above-quoted section, the judicial power of the courts created pursuant to Article III, Section 1 of the Constitution (Constitutional courts) extends to nine classes of cases and controversies which fall into two general groups. The first group is comprised of causes (1) arising under the Constitution of the United States and the laws and treaties of the United States as determined and established by Congress; (2) in which ambassadors and other public ministers and consuls are parties; and (3) involving admiralty and maritime jurisdiction. The second group is comprised of the six (6) enumerated types of causes, categorized as "controversies".

The fundamental distinction between the two was enunciated in 1821 by Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheat 264 (1821), wherein he stated:

"In the first, their jurisdiction depends on the character of the cause, whoever may be the parties. This class comprehends 'all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.' This cause extends the jurisdiction of the Court to all the cases described, without making in its terms any exception whatever, and without any regard to the condition of the party. If there be any exception, it is to be implied, against the express words of the article. In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more States, between a State and citizens of another State,' and 'between a State and foreign States, citizens or subjects.' If these be the parties, it is entirely unimportant, what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

Thus, within the meaning of Clause 1, a "case" arises when any question respecting the Constitution, treaties or laws of the United States has assumed "such a form that the judicial power is capable of acting on it." [8] While the form of the proceeding is not significant, in order for the judicial power to be exercised, there nevertheless must be an actual dispute between adverse parties wherein the court is called upon to resolve a disputed issue between parties having adverse interests allowing of specific relief. Since judicial power is "the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision" [9] the court will not act when the parties are merely seeking advice or an abstract declaration of the law. However, when any such actual dispute is presented for adjudication to the courts and the subject matter of the dispute arises from a question concerning either the Constitution, a law or a treaty of the United States, a "case" is presented within the meaning of Article III of the Constitution.

Thus, a case consists of the disputed rights of adverse parties arising under the Constitution or a law or a treaty of the United States whenever the decision concerning those rights depends upon the construction by the court of either the Constitution, a law or a treaty of the United States.

With respect to the term "controversy", the Supreme Court, in *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227 (1937) defined it as arising, "Where this is a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceding upon the facts alleged . . ."

Thus, as used in the Constitution, a "controversy" is less compresensive than a "case" in that it includes only suits of a civil nature. As described, the fundamental distinction is that in one class of actions ("cases") the jurisdiction of the Federal courts depends on the nature of the cause, irrespective of the identity of the disputing parties, and in the other ("controversies") jurisdiction depends on the nature of the parties before the court, regardless of the nature of the action. *United States v. Texas*, 143 U.S. 621, 642 (1891). In either situation the action brought must be ripe for judicial determination and in that regard the requirements of controversy enunciated in *Haworth* are equally necessary of fulfillment with respect to cases. However, for purposes of the proposed legislation, the technical distinction between the terms "case" or "controversy" is not relevant since suits brought under the proposed legislation would fall in each class. For, any action so brought would be one arising under the laws of the United States and also one in which the United States is a party. Therefore, in either situation, the central inquiry reduces to a determination of whether or not the action brought is one to which the judicial power of the United States extends regardless of whether or not such action is designated for purposes of form as a "case" or a "controversy".

In *Smith v. Adams*, 130 U.S. 167, 173–174, the Supreme Court held that where the judicial article of the Constitution restricting the limits of the judicial power of the United States refers to "case and controversy" it refers to ". . . the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights, or the *prevention*, redress or punishment of wrongs. Whenever the claim or contention of

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[8] *In re Summers*, 325 U.S. 561 (1945).
[9] Miller, Constitution, 314, quoted in *Muskrat v. United States*, 219 U.S. 346, 356 (1911).

a party takes such form that the judicial power is capable of action upon it, then it has become a case of controversy".[10]

Apart from the distinction that a "case" arises under the Constitution, laws or treaties of the United States, and a "controversy" arises out of any "legal" dispute arising between adverse parties, the requirements for a dispute to be appropriate for judicial determination pursuant to the terms of Article III are common to both classes of actions. These requirements are that: (1) an actual controversy exists over a dispute issue. *In re Summers*, 325 U.S. 561 (1945); (2) the dispute must involve real and substantial rights which are in dispute, *Little v. Bowers*, 134 U.S. 547 (1890); (3) the action in the courts seeks a judicial determination of these disputed rights, *Swift & Co. v. Hocking Valley Ry Co.*, 243 U.S. 281 (1917); (4) the dispute between the parties is definite and concrete and touches the legal relations of the parties who have adverse legal interests, and (5) the rights of the complainants are being imminently threatened by the defendants and such rights will be lost, destroyed or impaired in the absence of judicial determination, *Aetna Life Insurance Co. v. Haworth, supra.*

When these requirements are satisfied, the judicial function may be appropriately exercised. *Aetna Life Insurance Co. v. Haworth, supra.*

It must, therefore, be determined whether or not actions brought in conformance with and pursuant to the provisions of the proposed legislation satisfy the above-enumerated requirements. Under the terms of the proposed legislation, whenever in the opinion of the President of the United States a threatened or actual national strike or lockout involving the transportation industry or any part thereof, would if permitted to occur or continue, imperil the national health, welfare or safety and thereby, in the opinion of the President, create an actual or threatened national emergency, he may invoke the provisions of the proposed legislation. The question of whether an existing or threatened strike or lockout invades the rights of the public to be protected from the dangers inherent in such activity or threatened activity has in a related context been found to present a justiciable "case" appropriate for judicial determination within the constitutional requirement. In *United States v. United Steel Workers of America, CIO*, 202 F. 2d 132 (CA 2, 1953), a case arising under the current provisions of the Labor Management Relations Act dealing with National Emergency Disputes (29 U.S.C.A., Sec. 178, *et seq.*) the court was confronted with the question of whether an action brought by the United States on behalf of the general public to protect the public from an actual or threatened strike which created the possibility of a national emergency as determined by Congress satisfied the constitutional requirement of "case" or "controversy" and was appropriate for judicial consideration. In affirmatively answering this question, the court held that such threatened or actual conduct equalled an invasion of the rights of the public and. therefore, protection of those rights was properly a judicial function.

The court, in arriving at this conclusion, drew support for its decision from the decision of the United States Supreme Court in the *Debs Case*, (158 U.S. 564) wherein, in language equally applicable herein, the Court stated:

"Every government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal that it has no pecuniary interest in the matter.

"The obligations which it is under to promote the wrong-doing of one resulting in injury to the general welfare, is often of itself sufficient to give it standing in court. . . . whenever the wrongs complained of are such as affect the public at large, and are in respect to matters which by the Constitution are entrusted to the care of the Nation, and concerning which the Nation owes the duty to all citizens of securing to them their common rights, then the mere fact that the government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts, or prevent it from taking measures therein to fully discharge those Constitutional duties . . . Constitutional provisions do not change, but their operation extends to new matters as the modes of business and the habits of life of the people vary with each succeeding generation."

Therefore, the court in the *Steelworkers* case, found that an action brought by the United States to protect the general public from the adverse effects, either

[10] See also, *LaAbra Silver Mining Co.* v. *United States*, 175 U.S. 423 (1899) where the Court stated that if a proceeding involves a right which in its nature is susceptible of judicial determination and if the determination of such rights is not simply ancillary or advisory, but is the final and indisputable basis of action by the parties, it is a "case".

actnal or threatened, of strikes which in the determination of Congress created the threat of a national emergency, constitutes a justiciable "controversy" within the meaning of the Constitution and as snch is appropriate for judicial determination.

Although the *Steelworkers* case involved an action in the Federal District Court seeking an injunction against a work stoppage engaged in by the union, it made clear that it was the nature of the rights being violated and not the nature of the remedy being sought that created the necessary controversy.

As provided in the proposed legislation, the proceeding instituted by the Attorney General is an action brought to protect the rights of the general public by means of the "final offer selection" remedy therein provided. The fact that the legislation prescribes the remedies available to the court in affording protection to the public interest serves as no impediment to its implementation. For, Congress has the power to provide a remedy in cases where none existed at common law and particularly, where, as here, Congress establishes a new course of action and a new remedy therefor, the remedy so provided is exclusive, mandatory npon the conrt and must be complied with in all respects. *Sun Theatre Corp. v. RKO Radio Pictures*, 213 F. 2d 284 (CA 7, 1954).

Further, although the Steelworkers case dealt with jnrisdiction granted by Congress to the Federal District Courts, it has previously been demonstrated that once an action satisfies the constitutional case or controversy standard, Congress can expand the jurisdiction of and invest original jurisdiction to adjudicate such actions in any Court it deems necessary or appropriate.[11] While the jurisdiction of the Circuit Courts as now constituted is exclnsively appellate no constitutional impediment exists to establishing areas of, and investing Circuit Courts with, original jurisdiction.[12]

IV. THE CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT CAN BE INVESTED WITH THE AUTHORITY TO SELECT AND EMPANEL THE THREE JUDGE COURT PROVIDED FOR IN THE PROPOSED LEGISLATION

The question of whether or not Congress can enact legislation providing for the selection by the Chief Jnstice of the Supreme Court of the United States of justices to sit on the proposed three judge court can be and has been answered affirmatively by the courts, notwithstanding the contentions raised that such legislation and resulting appointments impose non-judicial functions of the Chief Justice and usurp the constitutionally expressed powers of appointment and confirmation residing in the President and the Senate.

While, as a general rule the judiciary may not *on its own authority* exercise non-jndicial powers, Congress may enact legislation granting or requiring the performance of functions which, while not strictly either judicial or non-judicial, are as here, reasonably incidental to the fulfillment of judicial duties, *Pope* v. *United States*, 323 U.S. 1 (Ct. Cl., 1944); *United States* v. *Mayton*, 335 F.2d 153 (CA 6, 1964). The courts have upheld legislation enacted pursuant to this congressional authority and have stated that the constitutional power of appointment and confirmation of federal judges vested in the President and the Senate of the United States, respectively, is not thereby usurped. In *Lamar* v. *United States*, 241 U.S. 103 (1914) the United States Supreme Court upheld, as a constitutional delegation of power, the authority granted one federal judge to assign another federal judge to sit in a district, other than that to which he was initially appointed and confirmed.

Moreover, specific statutory authority has been granted to the Chief Justice of the United States Supreme Court to make appointments and transfers of federal jndges from one United States Circuit Court of Appeals to another[13] and to assign retired justice of the Supreme Court to perform judicial duties on any

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[11] The power of Congress to initially invest, withdraw, enlarge or diminish the original jnrisdiction of the federal courts is applicable only to the *inferior* federal courts, either Constitutional or Legislative. Article III, Section 2, Clause 2, of the United States Constitution specifically enumerates those matters over which the United States Supreme Conrt shall exercise original jurisdiction and such enumerated original jurisdiction cannot be either added to or restricted. There is, however, no concomitant prohibition regarding congressional ability to delineate the appellate jurisdiction of the Supreme Court and in conformance with the constitutional mandate of case and controversy, Congress, pursuant to its constitntional authority, can determine the areas and exercise of such appellate jnrisdiction in all the federal courts.

[12] The Emergency Court of Appeals, discussed *supra*, provides an example in which Congress did, in fact, exercise this power.

[13] 28 U.S.C.A., Section 291(a).

Circuit Court at the discretion of the Chief Justice.[14] *United States* v. *Moore*, 101 F.2d 56 (CA 2, 1939).

Finally, legislative and judicial precedent exist supporting the grant of authority by Congress to the Chief Justice of the United States Supreme Court to appoint justices to sit on newly constituted courts. As stated above, Congress, in creating and establishing the Emergency Court of Appeals, there specifically provided that the selection of the judges to sit thereon was to be made by the Chief Justice and the constitutionality of such legislation was subsequently upheld by the Supreme Court. See, *Yakus* v. *United States*, *supra*.

CONCLUSION

Therefore, on the basis of the discussion herein presented and on the basis of the applicable cases herein cited, it is the conclusion of the undersigned that the proposed legislation for dealing with national emergency strikes in the transportation industry and particularly those provisions therein providing for the creation of a three judge court selected by the Chief Justice of the United States Supreme Court from among the active judges now residing in the existing United States Circuit Courts of Appeals are consistent with sound principles of constitutional law.

Mr. DINGELL. I think it a novel and innovative idea, but I think we have to weigh it carefully and I notice one question you did not address and this is a matter that the courts are quite attentive to. I am sure you recall, in other issues they rejected nonjudicial as not constituting a case or controversy and for this reason there was set up the nonconstitutional or legislative courts, which we have done.

Mr. HARVEY. Will you yield?

I might say you might also consider Chief Justice Burger's speech of a year ago where he sharply chastised Congress for thrusting upon the court nonjudicial duties. I am not certain of the date of that speech, but I am certain they would not be welcome by the court.

Mr. SMETANA. I will have to research this, but I think there have been a number of bills for judicial reorganization removing some of the direct appeals to the court, and perhaps there could be a trade-off, where certain items of direct appeals that take up the court's time would be removed and another inserted, such as this. I think this would not take up that much of the court's time, and the courts then would be happy.

Mr. HARVEY. I think your remarks made in connection with the class action legislation pending in Congress at the time and whether they would be applicable to this was appropriate.

Mr. DINGELL. The committee is grateful to you for your appearance and your very helpful testimony. We thank you.

Our next witness is Charles Rhoades, Oklahoma Wheat Commission.

Mr. Rhoades, we will be happy to hear your statement, if you will identify yourself fully and give your name and adress for the record.

STATEMENT OF CHARLES D. RHOADES, EXECUTIVE DIRECTOR, OKLAHOMA WHEAT COMMISSION

Mr. RHOADES. My name is Charles Rhoades, and I am executive director of the Oklahoma Wheat Commission. My address is 3108 Northwest Expressway, suite 102, Oklahoma City, Okla., 73112.

Mr. DINGELL. Mr. Rhoades, I note you have a lengthy statement and I observe that we probably will have a quorum call shortly on the

[14] 28 U.S.C.A, Section 294

floor, and so that you can apportion your time properly, I would advise that—well, it is about 5 minutes to 12, and we probably will have a quorum call 10 after, or thereabouts, and I expect it would be well to insert your full statement in the record and if that is your wish, I will, by unanimous consent, do so.

The Chair hears no objection and the full statement will be inserted, and the Chair recognizes you to summarize.

Mr. RHOADES. In addition to the statement that I will make, I would like to include a statement for the record by John J. Todd, traffic consultant, National Cotton Council of America; a statement on the effect of the transportation strike by Mr. Harold Kuehn, president of the American Soybean Association; a Gulf Ports Agriculture Association report from the Farmer-Stockman's magazine; and a statement by William Flanagan, executive secretary, Oklahoma Peanut Commission.

Mr. DINGELL. Without objection, the documents referred to will be inserted in the record following your testimony.

Mr. RHOADES. I will skip through and try to cover it. I know most of you have had an opportunity to glance through this statement and to notice that I am largely going to talk about the farmers, the farmers' situation, the elevator people, and the organizations that handle these farm products for people in these United States.

I have noted, too, analysis of world needs and potential in agriculture clearly shows the correctness of the view that more emphasis must be given to agriculture with the context of balanced economic development.

Foreign commerce are not new words to the agriculture community of this country. We have produced for foreign markets for years.

Farmers have a lot of problems today, they are not getting less numerous, and one of the big problems is transportation, not only with waterways but with rail and trucks. We do not have any problems as yet with air transportation of our products to the market.

The wheat industry, especially in Oklahoma, is dependent upon the overseas markets that are available and to the shipping that we can divert in that direction because, in Oklahoma, 85 percent of our wheat crops go into the overseas markets. On the national level, about 85 percent of our total wheat goes overseas so we have both rail and water that we are particularly interested in.

We were definitely involved in the dock strike on the Gulf in 1968 and 1969, and it went 105 days and cost the wheat industry in the neighborhood of $75 million, and cost the whole agriculture perspective over $300 million.

We find back then in 1969 in a story shown in the Journal of Commerce:

> President Nixon and Congress both served notice on the shipping industry and the International Longshoremen's Association yesterday that they must settle the 49-day-old Atlantic and Gulf dock strike on their own, without Federal intervention.

We pleaded with both groups at that time for assistance and this was written when this strike was only 49 days old, and it went to 105 days.

We have another strike possibly in the making. There is a current contract down in the gulf and along the Atlantic Gulf which

expires on September 30. Never in the history of this bargaining has there been a time when a new contract has been signed without a strike. It is much different from the west coast where they have gone 23 years without a strike out there.

We are worried about the markets that we would lose if we do not continue to have an adequate means of moving our products. In other words, we have already lost tremendous business to the Japanese Government, for instance. They have already started buying wheat and other items from other countries for delivery after September and October. They know they are going to have them and they have bought in advance on soybeans, because the United States had been the only supplier of soybeans and soybean products before the Japanese Government.

So, we have visited with these people in Japan and talked to the people here in the United States and asked them for their opinions and tried to see if they had offers, but we would have to be realistic on this side of the thing. And, too, there are a lot of jobs involved in this strike business.

U.S. goods and services create in excess of 3 million jobs for American workers, and we think that the First National City Bank of New York made a point very well recently when they said:

> Since 1950, worldwide industrial production has almost doubled, and the volume of world trade has almost doubled and any businessman ignoring the world market is betting against the future. This is all of the farm products that we grow, especially in the Mid-West, along in there, and we do have problems of our own without having to be involved in the strike problems, but we have those, too.

Clarence D. Palmby, Assistant Secretary, U.S. Department of Agriculture, made a statement to the Subcommittee on International Trade, Committee on Finance, U.S. Senate, on May 20, 1971, when he said:

> An agriculture that is exporting the harvest of 70 million acres out of a total harvested acreage of 290 million, is obviously international. Our domestic policies—our agriculture's day-to-day production and marketing decisions—are affected by the world market. At the same time, the world market is influenced by the American farmer—the judgments he makes, his reactions to policies of his government, and the conditions of his natural environment.

The thing that Mr. Palmby overlooked was the fact that no matter how many acres exports represent or how many bushels or tons are involved, production is ruled nil and void when transportation strikes are permitted to tie the hands of agriculture.

It was on Tuesday, March 25, 1969, that the Houston Chronicle in an editorial called attention indirectly to this committee with this paragraph:

> The Chronicle believes in the principle of free collective bargaining. When parties to a strike, however, permit a dispute to drag on like this one, when such a wide area and so many businesses and individuals are being hurt, and when New York, South Atlantic and East Gulf ports have already reached agreement, then one's faith in collective bargaining begins to weaken. Inevitably, we begin to look to Washington for help.

This was 2 years ago they said this. We know, or we believe that you do have the key to it. We think that the decision you will make will be very important to us, probably the most important since 1616 when we first shipped agriculture products, 200 pounds of tobacco, to England.

We have a balance of payments involved on agricultural products and especially with the cash markets and the fact that they are going up considerably, and we would have to have transportation on all of these items. And we cannot be successful without adequate transportation.

I am sure that, after you have read and digested the situation in agriculture and the effects that strikes have on the economy of rural America, that you will have a better idea of our problems.

I am here today, not in the vein of seeking sympathy, but to give the facts and allow agriculture and related businesses to help themselves.

I am sorry that our Congressman Jarman was not here. He is our friend and we would have like it if he were here.

(Mr. Rhoades' prepared statement follows:)

STATEMENT OF CHARLES D. RHOADES, EXECUTIVE DIRECTOR, OKLAHOMA WHEAT COMMISSION

Chairman Jarman and members of the sub-committee, Gentlemen, I am delighted to have these few minutes with you today. I will discuss transportation, strikes, foreign commerce. There are problems and solutions and the chore of getting the proper balance is by far the most complicated and tedious, but the most rewarding when success is finally registered.

Farmers in these United States are the most appreciative people in the whole world. They are usually understanding and always frank. They never complain as long and as loud as they should. These farmers do recognize the fact that they are in the minority in the business world and remain among the few business people who buy everything at retail and sell everything at wholesale.

Farmers have problems—yes, big problems and this is borne out by the fact that hundreds of thousands of them have quit their farming operations and are today seeking livelihoods in other endeavours. This is not by choice, but by necessity. They are finding that incomes do not compensate for the time and efforts necessary to make ends meet.

Analysis of world needs and potentials in agriculture clearly shows the correctness of the view that more emphasis must be given to agriculture with the context of balanced economic development.

Foreign commerce are not new words to the agriculture community of this country. We have produced for foreign markets for years.

I'm here today to assure you that if you want agriculture to remain a strong segment of our society, strong, definite, forward thinking action must be taken by this sub-committee. If you want agriculture products to continue to be a major item in the balance of payment for the United States, action by this group in helping to end transportation strikes and tie-ups will be required.

No group is more important to the farmers producing wheat, soybeans, cotton, rice, feedgrain and peanuts than is this sub-committee.

The difficulties in transforming these potentials into solid achievements must not be underestimated.

Because of the rapidly expanding demand for food, this sub-committee must look seriously at foreign commerce and transportation problems that tend to regulate interstate and foreign commerce far more than production. I am talking specifically about strikes and the far-reaching effects they have on farmers, elevators, the main street businessman in our rural communities, local and state governments and finally the U.S. government.

Inaction can often prove just as detrimental as action. I refer to a news item in the Journal of Commerce, February 7, 1969, that read: "President Nixon and Congress both served notice on the shipping industry and the International Longshoremen's Association yesterday that they must settle the 49-day-old Atlantic and Gulf dock strike on their own, without federal intervention." It read further: "President Nixon made his hands-off attitude toward the strike known at a White House press conference. The Administration's position, he said, is that 'the primary responsibilities is on the parties themselves' and that the prospect of government action might encourage both sides to do nothing."

Farmers and farm-related organization leaders believe that guidelines for prevention and/or settlement of a strike should be laid down in such a manner as to protect innocent bystanders.

Strikes that involve agricultural products affect the economy of the entire world, including the United States. When strikes, whether rail, truck, airplanes or ships, occur, farmers are hurt quicker, feel the effect longer and witness irreparable loss of markets.

I am not here to represent agriculture in condemning unions or management. I'm here to call to your attention the damages that have been incurred in the past and will occur in the future until appropriate action is taken by responsible leaders such as make up this committee.

Farming is big business and getting bigger with fewer participants every day. A representative of the Japanese Food Agency recently asked me how much money it takes to start a wheat farming operation sufficient enough to make a living without outside work. My answer was that it takes enough money to start a bank—and enough guts to rob one!

Strikes don't always have to occur to riddle the farming industry. Japan already is experiencing problems from the threatened Gulf Port strike and is taking precautions against it, Nobuo Nikki, manager of the New York Produce department of an important Japanese import company told officials of the Gulf Ports Agricultural Export Association recently.

"Japan is increasing grain contracts with other countries for October and November. Japan also is increasing monthly shipments of soybeans through September because the U.S. is its only soybean source," Nikki said.

The Japanese trader then said: "The U.S. must effect legislation to deal with transportation strikes because even the threat of a strike, although settled at the last minute, has great impact on overseas markets."

Let us be realistic about this situation by taking actual figures. Earle Billings, executive vice president and secretary of the American Cotton Shippers Association, Memphis, Tenn., reported recently that: "The 1968 strike at Gulf Ports was particularly damaging to American cotton . . . and to the American cotton producers. From a survey of our exporting members taken in March, 1969, our members had some 115,000 bales of cotton on the docks at Gulf Ports with some 578,000 bales in warehouses awaiting shipment to ports when the 1968 strike began. These shippers estimated that they lost over $2,500,000 in carrying charges, alone. The loss of exports markets for our producers was even more damaging."

Mr. Billings continued: "We estimate that approximately 600,000 bales have been sold for shipment through Gulf Ports for the four-month period, October, 1971, to January, 1972. This figure would undoubtedly be higher, but for the uncertainty in buyers' minds that they can expect delivery. Even a casual observer would have to agree."

We in agriculture have reason to be excited and you, I am sure, share the same concern. The total value of U.S. agricultural exports to all nations was $6 billion in fiscal 1970. And to think, this could be whittled by a third or more with strikes. Production of one out of every four cropland acres is exported.

From another side of the coin, it is interesting to note that exports of U.S. goods and services create jobs for more than 3-million American workers, according to a study by the Bureau of Labor Statistics of the Department of Labor.

For the manufacturer, exporting means additional markets in which to sell his goods. The First National City Bank of New York made this point well in one of its recent publications: ". . . Since 1950 world-wide industrial production has almost doubled and the volume of world trade has almost doubled. Any businessman who ignores the world market is betting against the future."

Ralph T. Jackson, executive vice president of the American Soybean Association, summed up his industry's situation recently when he said: "Soybean exports increased from 266 million bushels in 1967–68 marketing year to 429 million bushels in 1969–1970 and if it had not been for the strike of 1968–69, it is safe to say that a considerable amount of the increase that resulted in 1969–70 would have been exported the year before at a price that was higher during the strike year." The loss to the soybean industry was pegged at several million dollars.

W. C. Theis, president of the National Grain and Feed Association, ended a summation of the effects of a strike with the assertion, "Gentlemen, we in this industry, including the producers, are constantly faced with the hazards which are acts of God and we have learned to expect them from time to time and to live with them. We cannot afford additional hazards that are induced by man-

kind. Every effort must be extended by all parties to forestall a dock strike at the Gulf this year."

Elbert Harp of the Grain Sorghum Producers Association, Lubbock, Tex., contends that the work of 15 years in overseas market development can be scuttled if a strike is allowed to take place this year. "We were greatly damaged, but managed to survive in 1968–69—we cannot do it again," he declared.

A good example of what happens during a strike and afterwards was the experience of rice growers. They blame the dumping of rice into markets and government programs after the 1968–69 strike for the 15 percent reduction in rice allotments in 1970.

Wheat farmers rely heavily upon consistent and adequate movement of their product. During the 1968–69 strike, it was estimated that some 50,000,000 bushels of wheat export sales were lost. Some have put estimates higher and some lower, but in my opinion, one bushel lost would have been too much.

From Tokyo comes these paragraphs:

"The West Coast dock strike now has Japan's government and industry wheat circles openly questioning the wisdom of depending on the U.S. for 50 per cent or more of its imported wheat supplies. The lengthy strike has embarrassed friends of the U.S. employed by the Food Agency.

"The fact that this is the first West Coast industrywide strike in 23 years carries little if any weight as an argument since it is also affecting the total Japan trade picture.

"Immediate U.S. wheat sales losses to Japan is conservatively estimated at six-million bushels."

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The editorial included these following paragraphs:

"What we know—and this is plain for the whole world to see—is that Houston and many innocent citizens are being badly hurt by the continuation of this strike. Whatever the issues, the containerization is the big hangup, they're not worth the continued shut-down of the Port of Houston and other West Gulf ports.

"We should not forget that the port is Houston's lifeblood. When this and other nearby ports are closed, it means business is forced to go elsewhere. It means wages are lost to the longsboremen who haven't been on the job since Dec. 20. It means profit loss to the stevedore companies. It means money lost to wheat and rice growers and other farmers whose produce cannot seek the normal markets. It means losses to ship owners. And it is financial disaster for thousands of businesses, large and small, involved in shipping: Truck operators, barge lines, railroads, insurance companies, importers, exporters, car dealers, bank interest, and for all the employees of these firms.

"Recently a spokesman for the Oklahoma wheat industry said it had lost 50-million bushels or about $75-million in business since the strike began—business that won't be regained because other wheat producing countries have already filled the demand."

Too, when overseas markets are gone causing definite income declines in every step of business from the farmers to the exporters, prices paid by U.S. consumers

are increased to help take up a little of the slack. This is the reason that strike-ending and prevention action by this sub-committee is necessary to protect the U.S. consumer from rapidly accelerating costs of living.

We believe that action should be taken by this sub-committee to prevent any and all transportation strikes while the facts are diligently weighed and a forthright decision on positive approaches are rendered.

We are confident that legislation sought by S590 by Senators Griffin and Dole and H.R. 3596 by Staggers and Springer contain basic solutions that when implemented by the decisions of this committee will provide a major step in the proper direction to protect the movement of our interstate and foreign commerce.

Now, when we stop momentarily to consider that agriculture has a long history of making important contributions to our international balance of payments and since it is known throughout the world that we have the balance of payment and the value of our gold at the top of the "do today" list, it is high time that action be taken to end current strikes and to prevent future strikes.

Our export of agriculture products started in 1616 with the shipment of 2,500 pounds of tobacco from Jamestown, Va., to England and has advanced until in 1970 our agriculture exports were valued at $6.8 billion.

The U.S. built up its gold stock to a record high of nearly $25 billion in 1949, but it has dwindled measurably since and one of the reasons has been the lack of agricultural trade caused by strikes.

I know that you can now clearly visualize the situation of agriculture and the effects strikes have on the economy of rural America. I am here today, not to seek out sympathy, but to present these facts and encourage you to help agriculture and related businesses help themselves.

Please accept my sincere thanks for having taken of your valuable time to listen for I know that you will find this material of vital importance as you conduct further sessions and finally make a decision that will be highly important to U.S. agriculture.

Thank you.

Mr. DINGELL. Mr. Rhoades, the committee is certainly grateful to you for a very helpful statement.

Mr. Harvey, any questions?

Mr. HARVEY. I have no questions, but I would just like to thank you also, Mr. Rhoades, for a very fine statement and assure you that our able chairman, Mr. Jarman, is also very mindful of the problems that agriculture faces in this field, and that he has expressed them over and over again on the other days that we have had hearings.

Certainly the problems of farmers in California as a result of the recent strike were some of the most serious and costly that any industry in the Nation has faced.

We thank you very much for coming.

Mr. RHOADES. Thank you.

Mr. DINGELL. Mr. Adams, any questions?

Mr. ADAMS. I have no questions, Mr. Rhoades. We appreciate your coming and testifying to indicate the problems of the State of Oklahoma and the Southwest.

Mr. RHOADES. Gentlemen, any time I can furnish any other information or shed any additional light on the situation involving agriculture and transportation strikes, we will be delighted to come back.

Mr. DINGELL. We will feel very free to call on you. We thank you.

(The statements of the National Cotton Council of America and the American Soybean Association, referred to, follow:)

STATEMENT OF JOHN H. TODD, TRAFFIC CONSULTANT, NATIONAL COTTON COUNCIL OF AMERICA

The National Cotton Council, with headquarters at 1918 North Parkway, Memphis, Tennessee, is the central organization of the American cotton industry, representing cotton producers, ginners, warehousemen, cottonseed crushers, cooperatives, merchants, and cotton manufacturers in the cotton producing areas of the country.

At its 1971 annual meeting in Dallas, Texas, the Council, by unanimous action of all seven segments of its memberships, adopted a resolution to "support legislation to set up a mechanism to prevent strikes affecting the transportation industry," and to "support legislation banning . . . strikes against the public interest . . . ."

We favor providing the President with new options for dealing with transportation strikes. We strongly feel that he should have the power to employ such options successively, and not be restricted to the choice of a single option.

We favor inclusion of the option of an additional 30-day cooling-off period.

We consider "final offer selection" to be the most promising and wholesome of all the newly proposed options, and urge its approval and adoption.

We agree with Representatives Harvey (C. R., July 28, 1971) that the option of "selective strikes" would be largely if not wholly ineffective unless it is carefully limited by appropriate safeguards for the public interest. For example, the simultaneous striking of the Sante Fe and Southern Pacific systems would shut down virtually all rail transportation of cotton from the producing areas of California, Arizona, New Mexico, and large portions of Texas. Similarly, the simultaneous striking of the Southern Railway and Seaboard Coastline systems would shut down virtually all rail transportation of cotton from all producing areas to the great majority of all U.S. spinning mills, which are concentrated in the states of Alabama, Georgia, North Carolina, South Carolina, and Virginia.

Cotton's only alternative to rail transportation is the service of unregulated (exempt) motor carriers. Such service is limited in available capacity, and in geographical scope. Its use as a practical matter is feasible only (a) from portions of the southwest to the Texas ports, (b) from portions of the Mississippi Valley states to New Orleans, (c) from Mississippi, Missouri, Tennessee, and the eastern portions of Arkansas and Louisiana to the southeastern spinning mill area, and (d) perhaps from some portions of California to California ports.

If employment of the new options by the President is conditioned upon a finding and notification by the Mediation Board that a particular dispute threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, then we suggest that his invoking successive use of such options should be mandatory rather than discretionary.

The most serious omission in a number of the proposals before your subcommittee is that they do not apply to longshore, maritime, or trucking disputes. Labor disputes in these industries are by no means unique, or different, as a practical matter, from such disputes in the railroad and airline industries. All are engaged in the transportation of property or property and people in interstate and foreign commerce. The common carrier trucking industry directly parallels the railroad industry, and the two are strongly competitive. The only distinction of the longshore and maritime industries is that they are engaged exclusively in overseas interstate and international commerce. This is a distinction without a practical difference. The U.S. railroads and truck lines also perform services essential to both land and seaborne interstate and international transportation.

The raw cotton industry, and all others engaged in exports and/or imports, suffer great losses from longshore and maritime strikes. Specific data showing the adverse effects of these strikes on cotton exports will be presented to the committee by the shipper segment of our industry in testimony of the American Cotton Shippers Association.

The current West Coast strike by the International Longshoremen's and Warehousemen's Union is their first since 1948. However, the International Longshoremen's Association, which blankets all Gulf and Atlantic ports, has struck at the expiration of every three-year contract since 1945. Another strike is contemplated at the expiration of the current contract, September 30, 1971. Such a strike would result in shutting down every seaport in the continental United States. This would be an intolerable situation.

The last I.L.A. strike (1968–1969) lasted 105 days, and caused irretrievable losses of hundreds of millions of dollars, permanent losses of overseas markets, disastrous losses of crop bankruptcies, and damage to our balance of international trade.

Cotton is an important factor in our export commerce and our international balance-of-payments problem. Repeated longshoremen strikes have badly eroded the confidence on the part of our overseas customers in the United States as a dependable source of supply. Even short strikes are critical because, typically, our overseas customers for cotton and other agricultural products have very

limited storage space for stockpiling of supplies, and must depend on frequent deliveries. Our inability to deliver compels them to seek their requirements from our foreign competitors. Unless their confidence is restored in our ability to make deliveries frequently, and without delay, such trade losses will be permanent.

It is essential to the future of foreign trade generally, and specifically to our exports of cotton, that additional options being considered for transportation strikes be extended to disputes in the longshore and maritime industries.

STATEMENT OF HAROLD KUEHN, PRESIDENT, AMERICAN SOYBEAN ASSOCIATION

Transportation of soybeans and soybean products is of vital concern to the approximately 600,000 soybean producers in the United States. The product of 45 million acres must be moved through the various channels of marketing— in many cases traveling 10,000 to 12,000 miles from farm to consumer. On farm storage for billions of bushels of soybeans is not available, nor is it feasible. The American soybean producer must rely upon the transportation industry to deliver the goods at a reasonable price and within reasonable time limits.

It is self-evident that the longer the line of transportation, the narrower becomes the channel through which goods must flow. Trucks, trains, and barges may be used to transport soybeans and soybean products the relatively short distances they must travel within the United States from farm to processor to consumer. However, if the beans, meal or oil is bound for Europe or the Far East, the only feasible method of transportation is by ocean-going ships. Thus, the products of an entire industry are funneled through one small bottleneck.

The dependency of the American soybean producer upon dependable transportation is shown by the fact that over half of the total production in 1969 was exported. The soybean producer has lead the way in spending his own toward developing markets for farm production. Because he has spent his own money developing markets, the soybean producer is not leaning on the American taxpayer for supplemental income in the form of government payments or other subsidies. But these markets are dependent upon steady and uniform supplies of soybeans, soybean meal and soy oil. During a severe transporation strike in this nation, entire industries overseas must close their plants because of lack of raw materials, or buy competing products at inflated prices. In many countries, it is more than just inconvenient or expensive, but actually threatening to their food supply. For example, during the last dock strike, the livestock and poultry industries in several countries ran short of quality feed. Equally important, many countries were forced to turn to other sources of vegetable oil, and once the formulas were adjusted to competing oils, soy oil had to force its way back into the market place.

The strike lasted nine weeks, during which time there were no exports. During the comparable nine weeks the previous year, shipments totaled 15.6% of the total exports for the year. The year following the strike, the same nine week period accounted for 14.34% of the total shipments.

Soybeans are bought and sold on a highly competitive market—and price is not the only consideration. To an investor building a multi-million dollar processing plant, a dependable supply is mandatory. Only three years ago the oilseed processing industry of the world considered sunflower the oilseed crop of the future. Many companies put a major advertising campaign behind their label with the picture of the big sunflower. But, suddenly sunflower seed was not available . . . prices were high. At the same time peanut prices went even higher. Several major companies had to report sizable losses for the year because they had tied their fortune to a raw material when they could not depend on the supply. At that time soybeans and soybean products began achieving their present stature in the export market for one reason—dependable source of supply.

Soybeans were grown over such a wide area that drought in one or two areas could not appreciably affect total production. Soybean production was not controlled by government. Supplies could be purchased any day of the year and contracts for shipment made any day of the year . . . even months into the future with assurance the supply would arrive when needed. A superior protein and a dependable supply available to anyone in the world any day of the year are the two most important factors behind the unequaled export record of soybeans and soybean products. The only thing that can mar that record is a transportation strike.

The sales lost during the strike are serious but they are only the part of the iceberg. The real penalty was pushing the Japanese into broadening their area

of trade with less dependence on the U.S. While this had been discussed for years the dock strike brought action. Japanese specialists were sent out to stimulate interest and attempt to contract for soybean and feed grain production in other countries such as Thailand and Australia. Many other importing nations did likewise, or increased efforts to raise more of their own oilseeds. That was in a time when there was a sizable supply in the world of all oilseeds. This year, with a relatively short supply there will be an even greater stimulus to increase self-sufficiency, increase competing production in other nations and reduce reliance on the U.S. for basic materials vital to the food supply of their nation. To other countries this goes beyond business economics. National leaders in many parts of the world cannot comprehend how such a devastating strike could be allowed every two years by the world's most powerful nation because they view exports from the U.S. as a vital link in adequate food for their people.

STATEMENT OF WILLIAM FLANAGAN, EXECUTIVE SECRETARY, OKLAHOMA PEANUT COMMISSION

THE EXPORT MARKET OF PEANUTS

As we all know, the most important item to the U.S. peanut grower today is a strong and beneficial program for our crop. Without this program the future of our industry would be in jeopardy.

Today we have a surplus situation which totals approximately 25 percent of the U.S. total production of peanuts.

To maintain this surplus and at the same time conduct a reasonable support program for the benefit of the entire industry, considerable costs become involved. The export work of the National Peanut Council program, of which the growers of Oklahoma are a member, is one of the major contributors in reducing this cost.

Our work in this field over the past several years has proven that considerable market potential is available in many parts of the world. We need these markets today and we will need them even more in the future.

Our primary interest basically, as a peanut industry, is to sell this surplus at the most advantageous price possible. The cash purchases received for available stocks is a direct contribution to off-set the cost of the federal program and to continue the necessary assistance we require.

If we can continue to encourage interest by developing export market demands through our quality program and our ability to ship on time, our programs future is assured. But if we must be at the mercy of increased transportation costs and the possibility of dock strikes our ability to cope with the world market will be diminished considerably.

The cost of producing agricultural products in our country compared to the cost of production in any other country has quite a wide variance. Therefore it is imperative that we eliminate all other variables possible.

We request agriculture products to be exempt from strike tie-ups and transportation increases in costs.

Bulletin

from

Gulf Ports Agricultural Export Association

Huge containers, such as these at the Port of Houston, are one of the causes of labor-management disputes that may bring a strike.

Are We To Have Another Costly Shipping Strike?

By Walter B. Moore

LOSSES OF $100 MILLION or more may threaten farmers of the Southwest during the next 6 months. Such a disaster could continue until it becomes more costly than the corn blight, or even drouth, in Texas, New Mexico, Oklahoma, Kansas and nearby states.

If it happens, as it has in the past, this costly calamity will be manmade.

A strike that will stop all shipments from ports between Lake Charles, La., and Brownsville, Tex., is the catastrophe that threatens Southwestern farmers and ranchmen. Don't think for a minute that it isn't your worry, just because you happen to be raising wheat in Texas, Kansas, or Oklahoma, rice in Arkansas or cattle West of the Pecos. Past experience has proved that the *entire* Southwest suffers when unions shut down Gulf ports.

Sept. 30, the contract expires between the West Gulf division of the International Longshoremen's Assn. (ILA) and the West Gulf Maritime Assn. (WGMA). ILA represents unions. WGMA is composed of ship owners, stevedoring firms and steamship agents.

ILA has called a strike every time a contract has expired since 1948.

The most recent one, in 1968-69, lasted 105 days. It stopped all exports and imports from ports in the West Gulf area, as did the 54-day and 34-day strikes that were called the 2 previous times contracts expired.

Here is what some agricultural leaders have said about the 1968-69 strike:

- Agric. Commissioner John C. White of Texas estimated the loss to farmers and ranchmen at over $100 million.
- Gerald Frazier, Union Equity Cooperative, Enid, Okla., said grain growers suffered severe losses.
- Kansas Wheat Commission Administrator Gerald Fowler and Robert Anderson, Omaha (Nebr.) Grain Exchange, reported significant losses in their states.
- Sidney Dean, Victoria, who was Texas Farm Bureau president in 1968-69, said "Agriculture, as the innocent third party, cannot afford to have foreign markets cut off for prolonged periods every time union contracts come up for renewal."

That's exactly what's likely to happen Sept. 30 unless the 2 groups — unionists and employers — reach agreement before that deadline.

Farm leaders and their organizations are working to prevent the strike. During the 1968-69 work stoppage, the Gulf Ports Agricultural Export Assn. was formed. Its membership includes representatives of such organizations as American Rice Growers Cooperative, Kansas Wheat Commission, South Dakota Wheat Commission, Texas Grain and Feed Assn., Plains Cotton Growers, Inc., Grain Sorghum Producers Assn., as well as many trade associations and commercial firms from Texas, Oklahoma, Kansas, Nebraska, Colorado, North Dakota, Louisiana and other states.

TO HEAD OFF the 1971 strike, the agricultural export organization has called on Congress to enact "legislation requiring compulsory arbitration and/or prohibition of strikes involving the transportation industry."

A resolution also asked that contract negotiations begin last March and that "at least 3 months prior to the expiration of the current contract all unresolved issues be laid open for the public to view and understand." (If that hasn't been done by the time you read this, that last request has been ignored.)

The agricultural export association president is Truitt Kennedy, Houston, a vice president of Goodpasture, Inc. He wrote James W. Gleason, president of the International Longshoremen's Assn.; Ralph Massey, president of ILA Gulf Coast District; and Tom Phillips, president of West Gulf Maritime Assn. (the employer group).

Kennedy reminded them reduction in trade hurts everyone, here in the United States and in foreign countries. (I can testify to that fact; 9 months after the 1968-69 strike ended, I was told in Japan that it had permanently damaged U.S. and Japanese trade in cotton.)

AS COTTON FANNING, executive assistant of Plains Cotton Growers, recently said, "When a foreign customer is forced to turn to another fiber or another country for his requirements, it is sometimes impossible to bring him back to the U.S. as a cotton customer."

In his letter to the disputing organizations, Kennedy said, "We realize that longshore labor has serious problems, we realize the U.S. merchant marine industry has serious problems, and we know from firsthand experience agriculture has serious problems.

The agricultural economy in the United States is precarious . . . the corn blight and the Southwest drouth conditions of 1971 have injured the farmers who produce our food and fiber."

Problems of labor and port employers which Kennedy mentioned may be briefly summarized this way. Containerized shipping and automation, along with foreign low-cost labor, have reduced jobs for union members. At the same time, American labor has become so expensive that it has hurt the U.S. shipping industry, virtually pricing it out of many world markets.

UNIONS ARE DEMANDING a guaranteed annual income for longshoremen, royalties on container shipments and increased pensions, with earlier retirement. Employers have said they can't afford to meet such costs. So, prospects for a settlement before Sept. 30 certainly look bleak.

A strike in 1971-72 could cost far more than the $100 million plus estimate mentioned earlier as the 1968-69 loss.

U.S. agricultural exports in 1970 were almost $7.2 billion — 21 percent more than in 1969. Texas, alone, exported $422 million worth of crops and livestock and their products. Illinois led with $650 million in the fiscal year that ended in June, 1970. California was second, with $536 million, followed by Texas, Kansas ($314 million), Arkansas ($296 million) and Nebraska ($270 million). 4 were in the top 10 in agricultural exports.

States that ship through Gulf ports would, obviously, be hard hit by a strike. Other states would be affected indirectly because products that couldn't move abroad would depress all prices and markets.

A good example of what happens was the experience of rice growers. They blame the dumping of rice into markets and government programs after the 1968-69 strike for the 15 percent reduction in rice allotments in 1970.

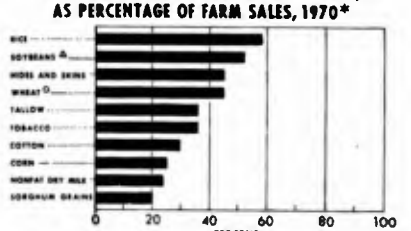
MORE THAN HALF of the U.S. soybean crop was exported last year, or some 435 million bu. It's easy to imagine what may happen if this crop can't move for months next fall and winter.

Percentages of some other major farm products that were exported in the non-strike 12 months from July 1, 1969 to June 30, 1970 are: Grain sorghum 21 percent, wheat 52 percent, rice 68 percent, cotton 30 percent, corn 13 percent, hides and skins 45 percent, tallow 35 percent and dry skimmed milk 25 percent.

INDIRECT EFFECTS of stopping exports can't be measured. But talking to foreign buyers in 1969 convinced me that we're in danger of losing much of our market for cotton, sorghum and other products if a strike again stops us from supplying customers. Our competitors would welcome a chance to take our place. Australia, for example, is working hard to sell the Japanese sorghum, cotton, meat and dairy products that are now coming from the Southwestern states of our nation.

That is why the producer organizations and shipping interests working together in Gulf Ports Agricultural Export Assn. are so concerned with preventing a strike before Sept. 30. Anyone who wants to know more about the strike danger, or GPAEA, can obtain information by contacting GPAEA, P.O. Box 627, Galena Park.

10 LEADING U.S. AGRICULTURAL EXPORTS, AS PERCENTAGE OF FARM SALES, 1970*



Of the 10 leading agricultural exports shown, note that most are major products of the southwestern states.

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Mr. DINGELL. That completes the witness list for today, and the committee stands adjourned until tomorrow morning at the hour of 10 o'clock.

(Whereupon, at 12:05 p.m., the hearing was adjourned, to reconvene at 10 a.m., Wednesday, September 15, 1971.)

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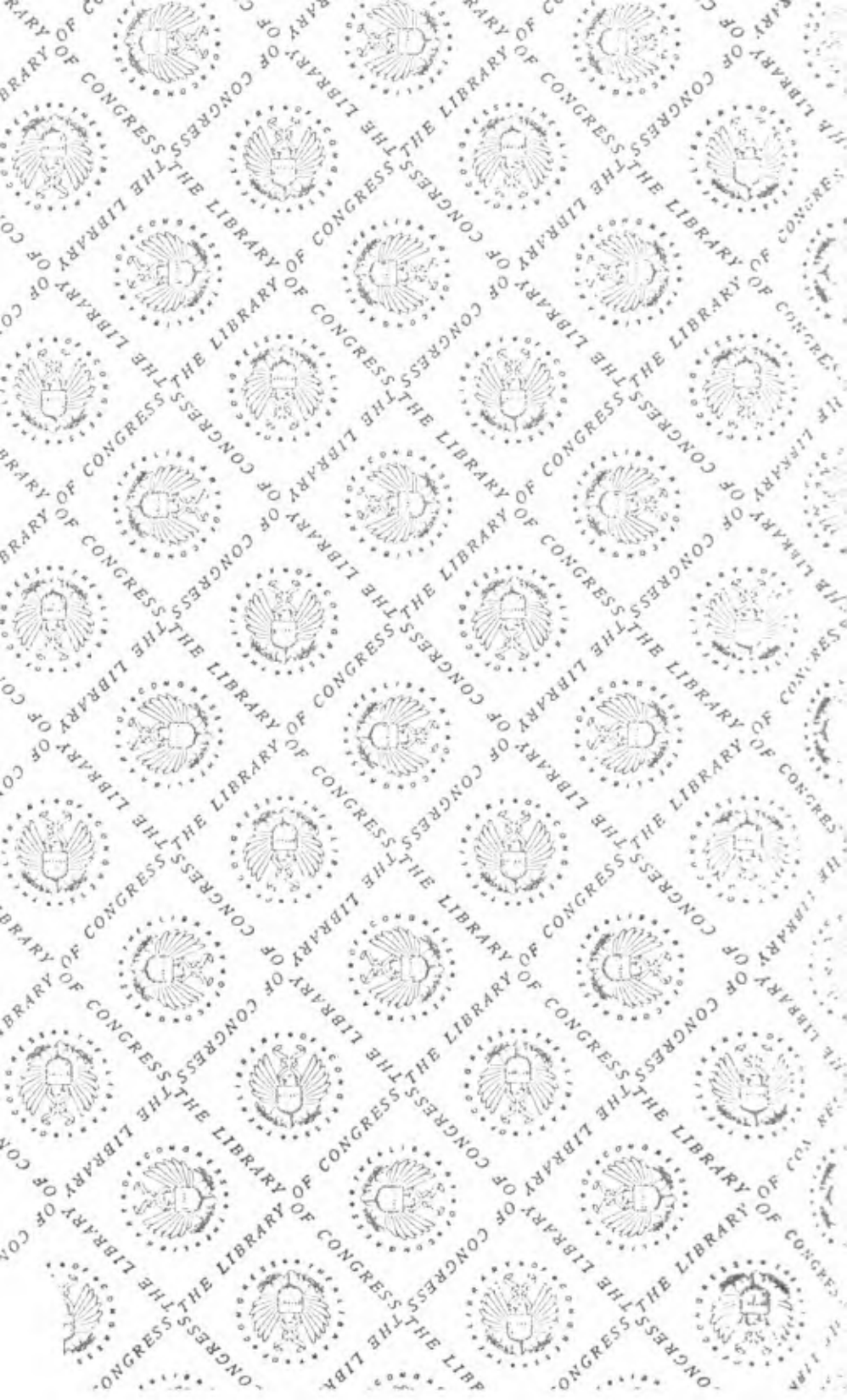
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